SUBMISSION

BY

MERRILL LYNCH, PIERCE, FENNER & SMITH
INCORPORATED

AND

ROYAL SECURITIES CORPORATION LIMITED

TO

THE ONTARIO SECURITIES COMMISSION

INDUSTRY OWNERSHIP STUDY COMMITTEE

[Committee]

SEPTEMBER, 1971

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TABLE OF CONTENTS

HIGHLIGHTS

- The Moore Report and the Joint Industry Committee Report arrived at erroneous conclusions on the question of public ownership of Canadian securities firms. Members of the Canadian securities industry should be permitted access to public capital on bases and subject to restrictions similar to those permitted to members of the New York Stock Exchange.

- The Canadian securities industry constitutes a key sector of the Canadian economy.

- Existing foreign ownership in the Canadian securities industry is not a dominant factor, has a beneficial competitive effect and is in the public interest.

- Governmental policy may dictate that further inroads by foreign investors into Canadian owned securities firms should be restricted to prevent domination.

- Present foreign investment in Canadian securities firms should not be compulsorily expropriated. Further, there should be no restriction against foreign investors entering the Canadian securities industry directly provided no acquisition of a Canadian firm is involved.

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THE ONTARIO SECURITIES COMMISSION INDUSTRY OWNERSHIP STUDY COMMITTEE

O.S.C. Industry Ownership Study Committee

In accordance with the request to the investment community made by the Ontario Securities Commission Industry Ownership Study Committee (the "Study Committee") in the weekly summary of the Commission for the week ended July 30, 1971, Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch") and Royal Securities Corporation Limited ("Royal Securities") hereby present the following submissions to the Study Committee.

In 1969 Merrill Lynch, through a wholly owned Canadian subsidiary ("Merrill Lynch Canada"), acquired 100% ownership of Royal Securities, a Canadian underwriter and distributor of government, public utility and industrial securities. At the time of acquisition, Royal Securities carried on business through 15 offices located throughout Canada, with at least one office in each province, and an office in New York City and London, England. Royal Securities is thought to be the only investment dealer in Canada having an office in each province. Royal Securities is one of 15 firms in Canada which is an authorized money market dealer for the Bank of Canada.

I GENERAL BACKGROUND

General History of Merrill Lynch Outside Canada

1.01 Merrill Lynch originated as an investment banking firm founded in 1914 by Charles E. Merrill and Edmund C. Lynch. Its business was also derived from E. A. Pierce & Co. which began its brokerage business in Richmond, Virginia in 1820. In 1940 the investment banking houses of Merrill Lynch & Co. Inc. and Cassatt & Co. Incorporated joined with E. A. Pierce & Co. to form Merrill Lynch, E. A. Pierce & Cassatt. In 1941 the firm of Fenner & Beane, organized in 1917 as cotton brokers, which later extended its operations to include other commodities and securities brokerage, was consolidated with Merrill Lynch, E. A. Pierce & Cassatt to form a new firm, Merrill Lynch, Pierce, Fenner & Beane. In 1958 the firm name was changed to Merrill Lynch, Pierce, Fenner & Smith. Business was conducted as a partnership until January, 1959 when the firm was organized as a Delaware corporation. Merrill Lynch has established an extensive brokerage business which includes 197 offices within the United States of America and 49 offices in other jurisdictions, 19 of which are located in Canada (including 15 offices of its subsidiary Royal Securities).

General History of Merrill Lynch in Canada

1.02 Merrill Lynch first began carrying on business in Canada in 1925 through an office of its predecessor, E. A. Pierce & Co., established in Toronto. Offices of Merrill Lynch were subsequently established in Montreal, Vancouver and Calgary in 1960, 1964 and 1968 respectively. E. A. Pierce & Co. held a seat on The Toronto Stock Exchange from 1925 until 1940. Merrill Lynch has since May, 1952 been a member in the Investment Dealers' Association of Canada (the "IDA") and a member of the Toronto, Montreal and Vancouver Stock Exchanges since 1940, 1960 and 1964 respectively.

The Moore Committee

1.03 In July, 1969 a committee of the IDA and the Canadian, Montreal, Toronto and Vancouver Stock Exchanges (the "Moore Committee") was formed to study " . . . the requirements and sources of capital and the implications of non-resident capital in the Canadian

securities industry." The question of non-resident *ownership*, as such, of Canadian securities firms was apparently not a matter which the Moore Committee was specifically instructed to examine.

The introduction to the resulting report of the Moore Committee makes it clear that the principal purpose of the Moore Committee was to review requirements for and sources of capital, not the question of foreign ownership. This distinction between the issue of sources of capital and the issue of foreign ownership is an important feature of this Submission. There is, however, no doubt that the establishment of the Moore Committee was a direct result of the acquisition by Merrill Lynch of Royal Securities. Foreign ownership, however, had not theretofore been a contentious issue in the Canadian securities business and foreign controlled firms had carried on business in Canada for many years as an integral and useful part of the industry. The acquisition of Royal Securities served, however, to emphasize and illustrate the serious industry problem of finding means to effect the orderly transfer of control of the larger securities firms from a senior group of owners to a junior group of owners. The question of foreign capital might well have been considered by the Committee in the framework of non-industry sources of capital generally. Instead, the Moore Committee branched off from this consideration to the somewhat extraneous conclusion that foreign securities firms should be excluded from participation in the Canadian securities industry even as minority shareholders.

The Moore Report

1.04 The report of the Moore Committee (the "Moore Report") was published in May, 1970. This Submission deals with the Moore Report in detail in Section V below.

Post Moore Report Events

1.05 Following its publication, at least three committees were established to review the Moore Report. A committee was established by the Quebec Provincial Government (the "Bouchard Committee") composed of Mr. Louis-Philippe Bouchard, C.R., Deputy Minister of Financial Institutions, Companies and Co-operatives, Mr. Claude

Prieur, Chairman of Quebec Deposit and Investment Fund, Mr. Marcel Cazavan, Deputy Minister of Finance, Mr. Paul McDonald, President of Grant Johnston Limited, Mr. Louis Rousseau, President of Molson, Rousseau & Co. Ltd., Mr. Marcel Lajeunesse, C.R., Chairman of the Quebec Securities Commission, Mr. C. B. Neapole, President of the Montreal and Canadian Stock Exchanges and Mr. Ronald Marcott, Director of Research, Department of Financial Institutions, Companies and Co-operatives, Secretary of the Committee. The Bouchard Committee has extensively solicited representations and submissions from interested parties. On September 8, 1971 the Bouchard Committee issued an interim report which recommends permitting members of the Canadian securities industry to go public and which welcomes foreign investment firms into Quebec. The Bouchard Committee indicated that a final report which will amplify and supplement the interim report is to be completed by the end of 1971.

A committee of the Canadian, Montreal, Toronto and Vancouver Stock Exchanges and of the IDA (the "Joint Industry Committee") was established in June, 1970. The report of the Joint Industry Committee (the "Joint Industry Committee Report") was published in July, 1971.

Also in July, 1971 the Quebec and Ontario provincial governments issued policy statements relating to the recommendations of the Moore Report and in July, 1971 Royal assent was given to Bill 63, an Act to amend the Securities Act (Quebec) which, among other things, gave the Quebec Securities Commission ultimate regulatory authority over stock exchanges within Quebec.

On July 13, 1971 the Prime Minister of Ontario announced the appointment of the Study Committee, to which this Submission is addressed.

II HISTORY OF THE GROWTH OF MERRILL LYNCH IN CANADA

Canadian Underwritings

U.S. Pay Issues

2.01 Since 1966, Merrill Lynch has been increasingly active in underwriting and selling the securities of or guaranteed by Canadian federal, provincial and municipal governments and Canadian corporations. The following table sets out the aggregate dollar value of "U.S. pay" Canadian securities which have been underwritten, or placed as a member of a "new-issue" group, by Merrill Lynch during the period from 1966 to and including May, 1971.

Description of Security	Aggregate Dollar Value (U.S.)
Canadian Government	$ 1,505,000
Provincial Governments	32,475,000
Provincially Guaranteed	38,158,000
Canadian Corporations	17,508,000
	$89,646,000

Further particulars of such participations are set out in the table annexed as Schedule A to this Submission.

It is therefore apparent that Merrill Lynch has been for some years providing Canadian governments and industries with a valuable service in raising capital by distributing their securities in the United States market.

Quebec Issues

2.02 In particular, Merrill Lynch has since 1970 been one of the 5 co-managers of "U.S. pay" and Euro Dollar issues of the Province of Quebec and Quebec Hydro Electric Commission. In 1970 and to date in 1971 it has placed with its clients in the United States and elsewhere securities of the Province of Quebec and Quebec Hydro having an aggregate value of $39,819,000 (U.S.). This amount exceeds by more than $20 million Merrill Lynch's actual underwriting commitment in these issues. In addition, Merrill Lynch has recently been selected as one of the co-managers of a $75 million Quebec Hydro debenture issue which was filed with the United States Securities and Exchange Commission on September 1, 1971 and is expected to be offered shortly.

Canadian Research Department

U.S. Research Division 2.03 Merrill Lynch maintains an extensive securities Research Division in New York City with branches in Los Angeles, Toronto, Geneva and Tokyo. The services of the Research Division are available without charge to customers of Merrill Lynch and Royal Securities. The Research Division prepares numerous comments, wire flashes, industry booklets and pamphlets for the information and assistance of the firm's customers. More extensive reports are prepared for institutional investors and other customers requiring comprehensive and technical information not usually required by the non-professional investor. Merrill Lynch employs more than 100 securities analysts to compile information concerning all major industries and all major constituent companies within those industries. Through the computer-based opinion retrieval system maintained by Merrill Lynch, current information and research opinions on approximately 2,500 corporations are readily available to all Merrill Lynch offices and to the offices of Royal Securities.

Canadian Research Division 2.04 The office of the Merrill Lynch Research Division in Toronto is referred to as its Canadian Research Department and carries out all the functions and services provided by the Research Division in New York. It is charged with the responsibility, for the entire Merrill Lynch organization, of research into the Canadian economy and Canadian securities. Including the department manager, the Canadian Research Department employs a total of 25 people in two major sections, namely the Analytical Section and the Portfolio Section. The Analytical Section consists of one industry specialist, seven research analysts, one technical analyst and certain support staff. The Portfolio Section consists of a senior portfolio statistician and support staff.

Extent of Research 2.05 At the present time, the Analytical Section provides detailed research opinions on approximately 380 Canadian companies and general information on a substantially larger number. To the extent possible, these research opinions are based upon personally conducted management interviews. The Analytical Section makes use of the computer opinion retrieval system maintained by Merrill Lynch in New York and has contributed to such retrieval system opinions on

225 Canadian companies. As a result, through the use of the computer, Merrill Lynch offices throughout the world have access immediately to computerized research on at least 225 Canadian companies. In addition, of course, such offices have available on request research information not recorded in the computer concerning hundreds of other Canadian companies.

Distribution of Research Reports

2.06 Daily news highlights relating to Canadian corporate developments are available from the Canadian Research Department to all Merrill Lynch offices wherever located and to a selected list of institutional clients. Commencing in December, 1971 equipment which is being purchased will enable these daily news highlights to be communicated by wire to all European offices. In addition, conference calls between various branch offices in Canada and the United States are frequently arranged by the Canadian Research Department so that such offices can obtain up to date information on the Canadian economy and on particular Canadian securities.

Canadian Current Selections

2.07 The Analytical Section also maintains a series designated as Canadian Current Selections which contains recommendations on stocks in two categories, namely (i) good quality-intermediate term and (ii) speculative-intermediate term. This list is brought up-to-date weekly and changes are wired to all Merrill Lynch offices. This aspect of the activities of the Research Department has been of great value to clients as demonstrated by the fact that from January 1, 1967 to September 3, 1971 the industrial index of The Toronto Stock Exchange appreciated 20.9% whereas the "good quality selections" of Merrill Lynch in its Canadian Current Selections appreciated by 76.0%. This index is adjusted weekly for removals and additions to the list so that the index reflects increases and decreases in the prices of the securities on the list based on an equal dollar investment in each security.

Use made of Research Division

2.08 During the first eight months of 1971, the Canadian Research Department received an aggregate of 6,378 enquiries for information on Canadian Securities, 47.5% of which came from branches of Merrill Lynch outside Canada. In August 1971, 57% of enquiries came from outside Canada.

Portfolio Analysis

2.09 The Portfolio Section assumes the responsibility for reviewing all investment portfolios to be analysed originating from the four Canadian offices of Merrill Lynch and all offices of Royal Securities and for reviewing the Canadian content of investment portfolios being managed by the portfolio department in the New York office. During the twelve months ended July 31, 1971 the Portfolio Section reviewed 540 Merrill Lynch portfolios having a value of $96.9 million and 379 Royal Securities portfolios having a value of $165.9 million.

Effect of Research Program

2.10 The extent and efficiency of the research facilities offered by Merrill Lynch to its clients has no doubt contributed to the increased client interest in Canadian securities. To illustrate this interest, on July 31, 1971 Merrill Lynch (including its Canadian branches) was holding Canadian securities on behalf of its clients (of all nationalities) in an aggregate dollar value of approximately $265,000,000 (Cdn). This figure does not include the dollar value of Canadian securities which were held at that date by clients of Merrill Lynch but not in the possession of Merrill Lynch. The dollar value of such securities in the possession of clients of Merrill Lynch would of course be substantial.

Canadian Clients Interested in Canadian Securities

2.11 As at July 31, 1971 the aggregate dollar value of Canadian securities held by Merrill Lynch for Canadian clients was approximately $56,500,000 (Cdn). This exceeded the aggregate dollar value of United States securities held for Canadian clients by approximately $13,000,000 (U.S.).

Training Program

2.12 Merrill Lynch has for many years operated an intensive training program in its home-office training school. The training program is maintained for prospective account executives and includes 11 weeks of concentrated instruction and study in the Merrill Lynch home-office training school as well as 14 weeks of on-the-job training in a branch office. This period of study leads to the New York Stock Exchange and National Association of Securities Dealers examination to qualify trainees to become registered representatives of Merrill Lynch. In 1970 over 800 account executives completed this program. To date, the program has been successfully taken by about 7,000

account executives. Merrill Lynch estimates that the cost of training an account executive in this program is in excess of $15,000. In addition, all account executives are obliged as a matter of Merrill Lynch policy to take the examination provided by the Chicago Board of Trade so as to qualify as commodity brokers. A management training program is also carried on for experienced account executives in order to prepare them for office management and other executive positions. Training programs are held for office managers and for home-office supervisory and management personnel. Special institutional sales training classes have been established and, in an effort to improve operational efficiency, specialized training programs are held for prospective branch office operations managers and for clerical and administrative employees. The Merrill Lynch training program is recognized throughout the industry as exemplary. These training facilities and policies have been available and applied to Merrill Lynch in Canada.

In addition, account executives who are to work in Canada are required to take the basic Canadian Securities Course and management personnel are required to take the advanced Canadian Securities Course.

III ROYAL SECURITIES: HISTORY AND ACQUISITION

Background

History 3.01 Royal Securities, a company incorporated under the laws of the Province of Nova Scotia, and its predecessor companies have been continuously engaged in the Canadian securities business since 1903. Branches were gradually established across Canada and by 1963 Royal Securities had 15 offices across Canada and an office in London, England and New York City. At the time of acquisition by Merrill Lynch, Royal Securities was a member of the Toronto, Canadian, Montreal and Vancouver Stock Exchanges and was one of 15 approved money market dealers granted borrower of last resort status by the Bank of Canada. By 1969 Royal Securities employed 237 people.

Acquisition by Merrill Lynch 3.02 During mid-1969, at the instigation of the vendors, Merrill Lynch entered into an agreement whereby it subsequently acquired all of the outstanding shares in the capital of Royal Securities. Such acquisition was of interest to Merrill Lynch for a number of reasons, among them being a desire to obtain participation in the Canadian underwriting market. Representatives of Merrill Lynch had in prior years been advised on a number of occasions, informally, that neither Merrill Lynch nor any other American brokerage firm would be invited to participate generally in syndicate or banking groups in Canada. Accordingly, prior to the acquisition of Royal Securities the participation of Merrill Lynch in this aspect of the securities business had been confined principally to underwriting Canadian governmental and municipal securities. As mentioned above (paragraphs 2.01 and 2.02), however, Merrill Lynch has contributed significantly to the distribution of new Canadian issues abroad.

Regulatory Approvals of Acquisition

3.03 In connection with the acquisition of Royal Securities by Merrill Lynch, Merrill Lynch took all reasonable steps to ensure that the proposed acquisition was not opposed by the relevant regulatory bodies. Those steps, and the approvals obtained, may be summarized as follows:

T.S.E. 1. *The Toronto Stock Exchange*

In various meetings with representatives of The Toronto Stock Exchange, including in particular a meeting held on May 16, 1969,

Merrill Lynch advised The Toronto Stock Exchange of the full details of the proposed acquisition. A continued dialogue between Merrill Lynch and The Toronto Stock Exchange led to a notice to members of The Toronto Stock Exchange dated May 23, 1969 in which it was stated that:

> "Member houses owned and controlled by non-Canadians have been active members of this Exchange for a number of years. The presence of these member houses in Canada has presented a substantial degree of competition and many Canadian members would readily agree that this form of competition has been advantageous in many respects. The nine American-owned firms of this Exchange have been good corporate citizens of Canada and their seat-holders, all Canadians, have contributed to the Canadian financial community in very substantial ways. At the same time there has been a strong feeling on the part of many that the number of American members should not increase beyond the present complement.
>
> . . . There has been no suggestion that Merrill Lynch has acted beyond the existing policy limits of the Exchange which would apply equally to any other member of the Exchange."

In discussing a proposal to require 55% of beneficial ownership of member firms to be held by Canadians it was stated in this notice:

> "It is not contemplated that the new policy would be retroactive to member houses which are already approved but would apply to any future acquisitions of Canadian member firms".

A copy of this notice to members is attached as Schedule B to this Submission.

M.S.E. and C.S.E.

2. *Montreal and Canadian Stock Exchanges*

On or about May 16, 1969, representatives of Merrill Lynch met with Mr. C. B. Neapole, President of the Montreal and Canadian Stock Exchanges, to advise him of the proposed acquisition. Such discussions led to the approval by those Exchanges of the acquisition as demonstrated by a letter from the Montreal Stock Exchange to Merrill Lynch dated July 23, 1969 advising that the proposed acquisition had been "accepted without qualification" by the two Exchanges.

V.S.E. 3. *Vancouver Stock Exchange*

Similar discussions led to a formal application for approval of the acquisition in a letter from Merrill Lynch to the Vancouver Stock Exchange dated July 18, 1969. The approval of the Vancouver Stock Exchange is evidenced in a letter to Merrill Lynch dated August 18, 1969 which states in part that ". . . this transaction in its entirety has been approved by the Board of Governors of the Vancouver Stock Exchange".

IDA 4. *Investment Dealers' Association of Canada*

Similar discussions between Merrill Lynch and representatives of the IDA resulted in the approval of the acquisition by the IDA, as evidenced by a letter dated September 18, 1969 from the IDA to Merrill Lynch Canada approving its application for membership. Such application was approved by the IDA after the date when Merrill Lynch, through Merrill Lynch Canada, had acquired all of the outstanding shares of Royal Securities.

Bank of Canada 5. *Bank of Canada*

On May 20, 1969 Mr. Donald T. Regan, the then President of Merrill Lynch, and other officers of Merrill Lynch and Royal Securities met with the Governor and other senior officials of the Bank of Canada. At that time, the plans for the acquisition and the development of Royal Securities' business in Canada were discussed openly and fully with the officials of the Bank of Canada. No indication was given at those meetings that there was any reason for Merrill Lynch not to proceed with the proposed acquisition.

Canadian Government 6. *Canadian Government*

Also in May, 1969 a meeting was held between the then President of Merrill Lynch, Mr. Donald T. Regan, other officers of Merrill Lynch and the Minister of Finance of Canada, the Honourable E. J. Benson. The plans of Merrill Lynch for the acquisition and development of Royal Securities were fully discussed with Mr. Benson. No indication was given that there was any reason for Merrill Lynch not to proceed with the proposed acquisition.

In a news release of the Department of Finance of Canada, the Minister of Finance dealt with the acquisition of Royal Securities and stated:

"I do not believe *it would be appropriate* nor have we presently the power to stop the sale of Royal Securities Corporation to Merrill Lynch (emphasis added)."

Q.S.C. 7. *Quebec Securities Commission*

By letter dated July 14, 1969 Quebec counsel for Merrill Lynch advised the Quebec Securities Commission in detail of the proposals for the acquisition of Royal Securities. By letter dated July 15, 1969, the Quebec Securities Commission advised that it saw no objection in principle to the course of action proposed.

O.S.C. 8. *Ontario Securities Commission*

Early in July, 1969 representatives of Merrill Lynch discussed the proposed acquisition with the then Chairman of the Ontario Securities Commission. The Chairman orally approved the transaction. The acquisition and such oral approval were confirmed by counsel to Merrill Lynch to the Chairman of the Ontario Securities Commission in a letter dated July 25, 1969.

GROWTH SINCE ACQUISITION

Modernization of Services

3.04 Following the acquisition of Royal Securities by Merrill Lynch in 1969, Merrill Lynch began an active program of modernizing and increasing the over-all efficiency of the services provided to the Canadian public by Royal Securities. For example, Merrill Lynch has caused coast-to-coast wire services to be installed in all offices of Royal Securities, a service which was only partially available to offices of Royal Securities at the time of acquisition. Other steps included strengthening of the research department, use of the Merrill Lynch management training school and restructuring of the accounting and custodial functions.

Research and Training Facilities

3.05 The very extensive facilities of the Canadian Research Department, outlined in paragraph 2.03 et seq above, became available for the benefit of Royal Securities' customers.

Merrill Lynch has, since 1969, trained in its management training school in New York most of the Royal Securities Canadian office managers. A number of Royal Securities account executives employed at the time of acquisition have subsequently been trained in the Merrill

Lynch training program. Moreover, all of the account executives who have been employed by Royal Securities since acquisition have been required to take similar training. The Merrill Lynch firm policy dictates, in general, that no account executive may have contact with the public without extensive training at the Merrill Lynch training school. The Merrill Lynch training program, which is available to employees on a world wide basis, has been in operation since 1946. The benefits and protection of the Merrill Lynch program to the investing public are self-evident.

Financial Growth

3.06 Sixty-seven account executives have been hired since the acquisition in order to provide additional service to the customers of Royal Securities and since acquisition the number of employees of Royal Securities has increased from 237 to 413. Gross revenue of Royal Securities for the 1970 fiscal period was approximately $5,634,000 compared with about $4,560,000 in the similar period in 1969. Gross revenue for the first six months of 1971 has been estimated at about $3,902,000. Of such gross revenue about 90% represents revenue derived from dealing in Canadian securities.

Growth in Service

3.07 The following table indicates various categories of Canadian securities underwritten or sold as agent by Royal Securities in the years immediately prior to and immediately following acquisition by Merrill Lynch. The table indicates an increase in the degree to which, following acquisition, Royal Securities has been able to raise capital for Canadian governmental and corporate securities issuers and, accordingly, the increase in Royal Securities' ability to serve the Canadian public.

	Canada Savings Bonds	Government of Canada Securities	Municipal and Provincial Securities	Corporate Securities
	$	$	$	$
1968	26,734,000	86,765,000	25,623,000	24,950,000
1969	36,846,000	39,098,000	24,188,000	28,196,000
1970	13,036,000	98,644,000	48,771,000	80,241,000
6 mos. 1971	Only underwritten at year end	67,860,000	31,929,000	63,260,000

IV MERRILL LYNCH BECOMES A PUBLIC COMPANY

Decision to go Public

4.01 In June, 1971 Merrill Lynch shares were offered for sale to the public in the United States of America under a registration statement filed under the Securities Act of 1933.

The decision of Merrill Lynch to seek public capital had been made known to regulatory authorities and to the public in general for several years. Every annual report to shareholders of Merrill Lynch since 1959 makes it clear that Merrill Lynch advocated public ownership as an acceptable and necessary means of increasing and stabilizing the capital resources of members of the American securities industry and indicated that Merrill Lynch contemplated public ownership of its own shares.

The 1966 annual report of Merrill Lynch commented:

> "To raise the needed huge amounts of new capital will require the confidence and faith of both individual and institutional investors. It will also require an alert, intelligent and strongly capitalized financial community. For this reason we believe permissive public ownership of member firms is necessary."

In the 1968 annual report of Merrill Lynch it was stated:

> "The operational problems on Wall Street emphasize anew the securities industry's need for additional capital. We again urge the New York Stock Exchange to permit public ownership of member firms."

Following the decision of the New York Stock Exchange to permit public ownership, the following statement appeared in the Merrill Lynch annual report for 1969:

> "The lack of adequate permanent capital of many Wall Street firms prevents them from automating their operations to meet the demands of heavy trading. For that reason, we welcomed the New York Stock Exchange's recent decision to permit public ownership of member firms and we were delighted the Securities and Exchange Commission endorsed the concept."

As the attitude of Merrill Lynch with respect to public ownership had been made publicly known for several years, as indicated above, it must be assumed that Canadian regulatory authorities were aware of the capital financing plans of Merrill Lynch at the time of the Royal Securities acquisition.

T.S.E. Rules

4.02 The suggestion has been made that the membership of Merrill Lynch Canada on The Toronto Stock Exchange has been prejudiced in that its affiliate, Merrill Lynch, by going public, contravened the provisions of Section 7.04 of the General By-law of The Toronto Stock Exchange. Such provision reads as follows:

> "Each affiliated company shall comply with all the Exchange requirements *as though it were a member* and each partner in and owner, director, officer, shareholder or employee of an affiliated company shall comply with all the Exchange requirements as though the affiliated company were a member, *except in each case to the extent that non-compliance with specific provisions may be approved* from time to time by the Exchange, either generally, individually or by classes . . . (emphasis added)".

The Exchange requirement in question is that contained in Section 5.03 of the General By-law which provides that, in effect, each proposed shareholder of a member corporation must first be approved by the Exchange. The Exchange's prior approval of each shareholder of an affiliate is, of course, impossible if the affiliate has publicly traded shares and it could therefore be argued that Section 7.04 of the General By-law was contravened.

Permitted Non-Compliance

4.03 The foregoing analysis is, however, deceptively simple. To begin with, the provisions of Section 7.04 clearly contemplate that non-compliance with specific provisions may be approved from time to time by the Exchange, either generally, individually or by classes. A specific procedure is set out in the General By-law of The Toronto Stock Exchange with respect to hearings as to matters of this nature and to date this procedure has not been followed. It is the intention of Merrill Lynch Canada, at the appropriate time, to invoke the exempting provisions of Section 7.04 to the end that a determination may be made that Merrill Lynch Canada is not in breach of any of the provisions of the by-laws of The Toronto Stock Exchange.

The Toronto Stock Exchange Act

4.04 Furthermore, Section 10(1) of The Toronto Stock Exchange Act, 1968-69 grants certain powers to the board of directors, among them being the power to govern and regulate:

> ". . . the partnership and corporate arrangements of the members and other persons authorized to trade on the Exchange, including requirements as to financial condition . . .".

It is our submission that the "corporate arrangements" of a member (Merrill Lynch Canada) do not include changes in shareholdings of the affiliate (Merrill Lynch) of the member. It may therefore be concluded on this interpretation of the governing statute that Merrill Lynch Canada is not in breach of any requirement of The Toronto Stock Exchange.

IDA Rules

4.05 No by-law or regulation of the IDA prevents public ownership of a member firm. Accordingly, by going public, Merrill Lynch did not contravene the rules of the industry's principal self regulatory body of which it was a member.

Canadian and Montreal Stock Exchanges

4.06 The by-laws of the Montreal Stock Exchange and the articles of the constitution of the Canadian Stock Exchange do contain provisions which impose a requirement of Exchange approval of shareholders of "affiliates" of member corporations. However, a formal determination by the governing body of each Exchange is required before Merrill Lynch could properly be categorized as an affiliate of Merrill Lynch Canada, the member. To the best of our knowledge no such determination has been made. It is the intention of Merrill Lynch Canada, at the appropriate time to make representations to the Montreal and Canadian Stock Exchanges to the end that Merrill Lynch Canada will not be held to be in contravention of the bylaws and articles of such Exchanges.

V ANALYSIS OF THE MOORE REPORT

Scope of the Moore Report

Moore Approach

5.01 The Moore Committee was, according to the introduction to the Moore Report, established "... to study the requirements and sources of capital and the implications of non-resident capital for the Canadian securities industry." As indicated above (paragraph 1.03), these terms of reference were expanded by the Committee from a "capital-oriented" examination to a "capital and ownership" examination. The Moore Report therefore, in fact, deals with two separate and distinct issues, namely:

(i) the question whether and to what extent members of the Canadian securities industry should have access to non-industry capital; and

(ii) the question whether and to what extent non-residents of Canada should be permitted to have or retain ownership positions in Canadian securities firms.

Inter-related Industry Issues

5.02 This Submission will not adopt the simplistic approach of the Moore Committee to the issues and questions presently under consideration by the Study Committee. Many of the important issues involved in an analysis of the securities industry today are interconnected and this inter-relationship should be kept in mind at all times. In a brief by the United States Department of Justice to the Securities & Exchange Commission made late in 1969, the following statement of Mr. Robert W. Haack, the President of the New York Stock Exchange, was quoted with approval:

> "Closely linked with the issue of a new commission structure are several other questions you hear frequently raised. What about institutional membership? What about non-member access? What about public ownership? These are serious questions, ones which we are paying a great deal of attention to, examining afresh, in the light of new business realities.
>
> To examine them intelligently, I recommend to you ... that these questions are inter-related and cannot be resolved on

a piece-meal basis. You cannot deal with them as isolated entities. They go together somewhat like a set of gears. Change the shape or size of one, and you have to change them all."

Moore Assumptions re Public Capital

5.03 Dealing first of all with the question of non-industry ownership, let us examine the assumptions on which the Moore Committee proceeded in analysing this question. Chapter 3 of the Moore Report, which considers the need for capital, contains an express warning that its conclusions are based upon certain assumptions as to future patterns in the securities industry. Specifically, it is assumed (Moore Report para. 3.2) that there will be no changes of the following nature:

> ". . . the rules concerning institutional ownership of stock exchange seats; major adjustments of the minimum commission structure for transactions effected on the stock exchanges; and the extension of the right of securities firms to engage in peripheral activities in areas other than the securities industry. No amount of study could result in predictions on all of these matters, and it is not within our terms of reference to attempt such predictions. If any of the major regulatory changes prescribed above are made in the future there should be a careful consideration of the impact that such changes would have on the need for capital and on the regulatory scheme proposed in this report."

The importance of these assumptions to the Moore Committee is reiterated in the Moore Report para. 3.28:

> "Possible regulatory changes such as those referred to in 3.2 would have a major influence on future developments. The impact on the need for capital of any such changes should be considered by the self regulatory authorities prior to their implementation."

Recent Regulatory Developments

5.04 In considering the weight to be given to the recommendations made in the Moore Report as to non-industry capital, it is therefore crucial to recognize that "future regulatory developments" of the nature referred to above have in fact taken place. To be specific:

1. By-law No. 86 has been enacted by The Toronto Stock Exchange as of April 19, 1971 to the effect that Exchange-set

(i.e. industry regulated) commissions are no longer applicable in respect of block transactions having a value in excess of $499,999. The era of the negotiated commissions has arrived. Analogous provisions have been enacted by the Canadian, Montreal and Vancouver Stock Exchanges.

2. The scope of the activities of securities firms has been enlarged by By-law No. 87 of The Toronto Stock Exchange which greatly extends "liability trading with customers" by members of the Exchange. Liability trades are trades in which the member deals in a listed security with his customer as a principal and thereby takes on a direct personal liability in respect of the trade in question. Analogous provisions have been enacted by the Canadian and Montreal Stock Exchanges. The Vancouver Stock Exchange has for some time permitted liability trading. We understand, moreover, that The Toronto Stock Exchange has under consideration reduction in the minimum size of block transactions from $500,000 to $100,000 in order to increase the liquidity of the marketing of securities on the Exchange.

3. At least one large Canadian investment company has publicly stated its intention to make a public distribution of its securities. Other Canadian securities firms are considering the same step.

4. The need for expensive improved communications systems and advanced electronic data storage and retrieval facilities, both capital intensive changes, to service the stock exchange and over-the-counter businesses has become increasingly apparent. Particularly is this so in order to compete with third market activities.

Negotiated Commissions

5.05 Dealing with the matter of negotiated commissions, it would seem likely that the commission income of brokerage firms in the Canadian industry over-all could well decline as a result of the elimination of the minimum commission structure. In that event, retained earnings as a source of capital could, for some firms, tend to lessen in importance. This in turn could stimulate the interest of securities firms in non-industry sources of capital.

The over-all effect of the introduction of negotiated commissions on the securities industry is uncertain. However, the following quotation from the Martin Report (see paragraph 5.12) is relevant:

"The question is whether the industry will be better able to function in the public interest if its commission rates are fixed and specified by the Exchange and the Securities and Exchange Commission, or if they are to be determined by each member subject to the sanctions of the anti-trust laws. This is the focal point on which this issue should be resolved.

The success with which capital has been raised to finance the economy in the United States is due in part to the dispersion and local activities of a multitude of broker-dealers. Fully negotiated rates may cause a substantial concentration of the securities business in a few large firms. Because of the strategic importance of the securities industry to the operation of the free enterprise-capitalistic system, control of this industry cannot be permitted to be concentrated in the hands of a few persons or firms. Such a concentration of power could not be tolerated even on the grounds of efficiency.

Negotiated rates may not have this effect. They may only serve to eliminate the inefficient, poorly managed broker-dealers. No one knows the answer to this question, but an abrupt change to fully-negotiated rates would be imprudent at a time when the industry needs continued earnings to accumulate and attract capital. The experiment now under way with negotiated commissions on transactions above $500,000 requires experience and analysis before the Securities and Exchange Commission and the exchanges proceed further."

Expansion of Liability Trading

5.06 Dealing with the new regulations with respect to liability trading, it should be noted that the Moore Report (para. 3.15) stated that "positioning" was not currently an important factor in the Canadian securities industry and attributed this partly to the legal requirements (i) preventing a member firm from acting as a principal and an agent in any trade on the floor of the Exchange and (ii) which require that all trades on the Toronto, Montreal and Canadian Stock Exchanges involving a value of less than $500,000 take place on the floor of the particular Exchange. These "legal requirements" have, since the publications of the Moore Report, been significantly changed (e.g. By-law No. 87 of The Toronto Stock Exchange).

The Moore Report (para. 6.7) discussed the relative illiquidity of the Canadian securities market and cited this alleged illiquidity as a further reason for the relative unimportance of "positioning" in the Canadian securities industry. In our submission this is an unwarranted assumption. It is undoubtedly provable that the Canadian securities industry is becoming more liquid all the time, a trend which in our view will be substantially accelerated by the implementation of the recommendations of the Report of the "Committee of the Ontario Securities Commission on the Problems of Disclosure Raised for Investors by Business Combinations and Private Placements" published in February, 1970. The enactment, as recommended in such report, of a statutory scheme for a continuing disclosure and reporting system would, without doubt, lead to increased activity in "third markets" and "fourth markets" in Canada, thus throwing a further strain on the capital requirements of Canadian securities firms.

Canadian Securities Firms Going Public

5.07 Dealing with the public announcement of a large Canadian investment company of its intention to make a public distribution of its securities, there is little doubt that this is the forerunner of other instances of Canadian firms electing or being compelled to avail themselves of the benefits of public financing. It is well known that early in 1970, Donaldson, Lufkin & Jenerette, Inc., a member of the New York Stock Exchange, effected the first public issue of a securities firm in the United States. Subsequently, Merrill Lynch made a public distribution of its shares in June, 1971. In addition, a preliminary prospectus for a public issue has been filed with the Securities and Exchange Commission by Bache & Company Incorporated, CBWL, Hayden Stone Inc., Reynolds Securities Incorporated and several other securities firms. Mitchum, Jones & Templeton Inc. and other United States securities firms are expected imminently to make public issues.

The pressures within the securities industry which give rise to this trend are common as between the United States and Canadian securities industries and it would therefore be unwise and unrealistic to assume that the Canadian securities industry will not equally feel the impetus to have access to public capital. This trend is inescapable because of the inadequacy of traditional capital sources to keep pace with industry changes and because of the "turn-over" problem as

among senior and junior members of management, which is discussed in more detail below (paragraph 5.18 et seq). A considerable part of the vigorous debate which has taken place within the Canadian securities industry since the publication of the Moore Report surrounds the conclusion of the Moore Committee to prohibit public ownership. There are many responsible persons in Canadian securities firms today who are strongly of the view that the trend above mentioned which is so discernible in the United States will develop in Canada in the very near future.

Moore Conclusion re Capital Erroneous

5.08 In paragraph 3.34 the Moore Report concludes that:

> "... based on the above analysis, it would appear reasonable to assume that the sources of capital currently available to the industry will continue in the future, as in the past, to enable the industry to satisfy adequately its need for capital."

In our submission, this conclusion, which is essential to many of the conclusions and recommendations of the Moore Committee, is fundamentally erroneous in that it is based upon assumptions, outlined above, which current events are proving or have proven to be incorrect or unwarranted.

Industry Financial Reversals

U.S. Securities Firms' Failures

5.09 Further, just as the Moore conclusion that present sources of capital are adequate is erroneous because of changes in regulatory requirements and other events discussed above, it is equally erroneous on the basis of certain recent serious financial reversals experienced in the securities industry. For example, on July 23, 1971, little more than a year after the publication of the Moore Report, the New York Stock Exchange published a notice to members setting out the status of its customer assistance program. This indicated:

1. that over $74,000,000 had been advanced or committed to liquidate liabilities of member firms which were in the course of or had completed liquidation;
2. that a further $15,000,000 had been allocated for use in connection with an indemnification agreement relating to du Pont Glore Forgan; and

3. that the New York Stock Exchange had raised an assessment of $\frac{3}{8}$ of 1% of new commissions for transactions on and after July 1, 1971 to enable the Exchange to honour an indemnification agreement relating to the "failure" of Goodbody & Co., one of the largest American brokerage houses. Merrill Lynch was the party to be indemnified after it agreed, at the instigation of the New York Stock Exchange, to acquire Goodbody & Co. There can be little question that Merrill Lynch was, at that time, the only firm in a position to make the acquisition.

These facts are illustrative of the conclusion, as reached by the New York Stock Exchange, that historical minimum capital requirements and historical sources of industry capital are no longer adequate to maintain a viable securities industry in a time of change. The suggestion of the Joint Industry Committee (discussed below in paragraph 6.04) that foreign controlled firms carrying on business in Canada be henceforth restricted to a maximum capital consisting of the minimums presently established by regulatory bodies plus 10% of net earnings per annum is in sharp contrast to the real industry needs. A Canadian industry minimum capital requirement which has been historically inadequate should not be translated into a maximum capital requirement. Further, to suggest that this severe restriction regarding capital should apply only to foreign controlled members of the Canadian securities industry is discriminatory and contrary to the interests of the Canadian investing public.

Possibility of Canadian Industry Failures

5.10 The Canadian securities industry has not, to date, suffered through the disastrous financial events which have beset the United States securities business. The Canadian securities firms have escaped similar financial disasters in large part because the Canadian industry has not yet developed the "back office" problems which arose in the United States as a result of substantial increases in volume and, further, because Canadian securities firms until recent changes in stock exchange rules were not heavily committed to block positioning, one of the significant factors which led to the United States failures. However, as brokerage volume increases and block positioning becomes more common in Canada, the importance of access to larger and more permanent capital sources will become as evident in Canada as it has become in the United States.

Canadian Contingency Fund

5.11 In considering the risk to investors of business failures in the Canadian securities industry and the ability of the industry to withstand the pressures of such failures, it should be borne in mind that the contingency fund established by the various Canadian stock exchanges and the IDA is presently established at the modest level of $1,500,000. As recent experience in the United States illustrates, the failure of even one medium sized Canadian securities firm could well exhaust the contingency fund.

Martin Report August, 1971

5.12 Early in 1971, against a background of crisis in the securities industry, the Board of Governors of the New York Stock Exchange requested Mr. William McChesney Martin, Jr. to undertake a thorough study of the Constitution, Rules and Procedures of the New York Stock Exchange. Mr. Martin's study persuaded him that these recommendations could not be confined to the New York Stock Exchange and must encompass the securities industry as a whole. The Martin Report, released in August, 1971, states that the public interest was the paramount consideration of the author in appraising the issues involved. As its first premise the Martin Report states:

> "The public interest dictates that the primary purpose of a securities market is to raise capital to finance the economy. Without continuous capital formation, our economy could not grow or prosper. It could not provide job opportunities to our growing labour force. It could not sustain a rising standard of living. It could not generate economic opportunities so vital to the health of our free enterprise system."

There is no reason to believe that this rationale is not equally applicable to the Canadian securities industry and to Canada.

Martin Report —Public Ownership Sound

5.13 In dealing with the vital issues of capital requirements, the Martin Report states:

> "Many member firms of the New York Stock Exchange need additional capital to meet present and future requirements. The basis on which this capital will be acquired is very important. The events of recent years have demonstrated dramatically the importance of permanent equity or 'cash' capital, and the need

for permanent capital cannot be over-emphasized. The trend in recent years toward the corporate form of doing business by member firms is desirable and should be encouraged because it tends to build capital through retained earnings and to attract capital on a permanent basis. Public ownership of member firms is a sound development which may in the future supply a substantial part of the growing capital needs of the securities industry."

Similarly, the President of the National Association of Security Dealers Inc. in a recent brief to the United States Securities and Exchange Commission in considering the advisability of permitting public ownership stated:

> "The tremendous expansion of the economy generally and the concurrent expansion of our capital markets have placed strains upon the industry which have only been too evident in the past two years. The additional capital that will be required for new and improved data processing facilities and for increased personnel to implement improved procedures underscore the necessity for additional capital for the industry."

Similarly, William J. Casey, the present Chairman of the United States Securities and Exchange Commission, being interviewed by U.S. News and World Report, August 16, 1971 issue, stated:

> "Q. Is it a good thing for brokerage firms to be publicly owned?
>
> A. Yes. I think more companies will go that way. It is the best method of bringing in the additional capital that the industry needs."

New N.Y.S.E. Rules

5.14 The recent crises in the American securities industry, as described in the Martin Report, led to amendments to the by-laws of the New York Stock Exchange, effective August 1, 1971, which make major revisions to minimum net-free capital requirements. Such amendments to the capital requirements of member firms of the New York Stock Exchange are set forth in a revised text of Rule 325 which was circulated to members with circular No. 336 on July 16, 1971. A copy of such circular is attached as Schedule C to this Submission. Principal among the amendments are:

1. the requirement that the maximum ratio between aggregate indebtedness and net capital must not exceed 15:1 rather than, as formerly, 20:1;

2. in order to establish permanence of capital, a requirement that capital be contributed for a minimum of one year and that it may be withdrawn only upon six months' notice;

3. a requirement that if any withdrawal of capital would increase the debt to capital ratio to greater than 12:1 the Exchange must be notified; and

4. a requirement that greater "haircuts" or discounts be imposed on the value of margined securities held which may be included in the calculation of net capital.

N.Y.S.E. Rules Compared to IDA Rules

5.15 The capital requirements for firms which are members of The Toronto Stock Exchange are substantially similar to those of the IDA. A comparison indicates that in many situations present capital rules for IDA members would be less stringent than those which the New York Stock Exchange has recently found necessary to adopt to prevent a further rash of business failures. Moreover, the suggestion has been made by members of the staff of the Securities and Exchange Commission in Washington that the new capital requirements of the New York Stock Exchange are still inadequate.

The point being made here is that the securities industry has historically been capital poor partly as a result of the inadequate capital requirements of the Stock Exchanges. This weak capitalization has led to very serious defaults in the United States; the same has not occurred in Canada for the reasons mentioned in paragraph 5.10 but not because the capital requirement rules in Canada are more stringent than those in the United States.

The Proposed Competition Act (Canada)

5.16 The inevitability of further and significant industry changes in the securities business can also be illustrated by reference to the Competition Act, tabled in the House of Commons as Bill C-256 and given first reading on June 29, 1971. If this Bill is enacted substantially

in its present form, it is clear that the fixing by Stock Exchanges of minimum commissions to be paid in respect of a sale or purchase of securities will constitute an unlawful arrangement between persons to fix the minimum price at which a service will be supplied and will therefore be prohibited under the federal law. Similarly, Stock Exchange regulations which restrict institutional membership on an Exchange would constitute a combination or arrangement between persons to allocate among themselves the market for the supplying of securities, an activity prohibited by the Bill. The only concession to the securities industry made in the Bill is the qualified exemption provided in Section 91 which provides that the prohibitions of the Bill do not apply in respect of an agreement or arrangement between persons ordinarily engaged in the business of dealing in securities that relates only to the underwriting or to the primary distribution of securities.

The proposed change in Canadian anti-trust laws as embodied in Bill C-256 would likely lead to reduced profits in the securities industry over-all and a further exaggeration of capital deficiencies.

Adequacy of Capital and the Public Interest

5.17 In our submission, the question of the adequacy and permanence of capital within the securities industry is a fundamental question of public interest. A grave disservice to the investing public and to the Canadian securities industry itself would occur if the narrow and stringent conclusions of the Moore Committee concerning non-industry capital were to prevail. To proceed on the assumption that "... sources of capital currently available to the industry will continue in the future, as in the past, to enable the industry to satisfy adequately its need for capital . . ." (Moore Report para. 3.34) would set the Canadian securities industry on a course perilously divergent from developments in securities markets in the United States which, of course, is our closest and largest trading partner.

It should be pointed out that the brokerage and investment businesses of Merrill Lynch and Royal Securities are in the course of being merged into Royal Securities which is to change its name to Merrill Lynch, Royal Securities Limited. Merrill Lynch, Royal

Securities Limited has no ambition to effect a public distribution of its securities in Canada. Our interest in the question of non-industry financing is an interest held on behalf of the securities business generally.

The Study Committee, in our respectful opinion, should reach a conclusion on the question of non-industry capital by way of public financing opposite to that arrived at by the Moore Committee.

"Turn-Over": an Industry Problem

Nature of Problem

5.18 Having concluded, erroneously in our view, that historical capital sources were adequate for anticipated future growth of the securities industry, the Moore Committee then addressed itself to a question of substantial interest to members of the Canadian securities industry (but not of direct importance to the Canadian investing public), namely, whether additional sources of capital are necessary to alleviate the "turn-over problem" experienced or anticipated by Canadian securities firms (Moore Report para. 3.39). The "turn-over problem" arises in the transfer of ownership of securities firms from retiring partners to younger partners who find it difficult to generate adequate capital to acquire the interests of the retiring partners. This is a problem which has vexed Canadian securities firms for years and is undoubtedly one of the principal reasons for the desire of certain Canadian securities firms to have access to public capital.

Risks Inherent in Turn-Over Problem

5.19 No solution to the "turn-over problem" has been found in historically available capital sources. One serious consequence of the "turn-over problem" which should be borne in mind by the Study Committee is the resulting risk of domination of the securities industry by the Canadian chartered banks. Due to the inability of securities firms to raise capital from the public, junior partners have been obliged to turn to the Canadian chartered banks for financing to enable them to acquire the interests of the retiring partners. In the event of a decline of profits in the industry in particular periods, borrowers might not be able to service interest and capital repayment of bank indebtedness out of earnings. It is submitted that in the interests of the Canadian securities industry as a whole, additional

sources of capital should be made available to securities firms to avoid the potential domination of the industry by lending banks.

Turn-Over Problem Private Interest Matter

5.20 Without underestimating the severity of the "turn-over problem", it should be emphasized that it is a problem which relates to the internal structure of Canadian securities firms and not to the ability of such firms to serve the Canadian investing public. A critical analysis of the Moore Report indicates that a substantial part of the Moore Report recommendations are related to this internal structural issue. The specific recommendations of the Moore Committee regarding access to "non-industry capital" are contained in Chapter V of the Moore Report and need not be set out in this Submission. The recommendations concerning "approved investors" and "industry investors" are elaborate and detailed. The Study Committee will no doubt analyse and reappraise these Moore recommendations. However, Merrill Lynch and Royal Securities in this Submission do not propose to enter upon a critique of such recommendations as they are not germane to the Merrill Lynch-Royal Securities corporate structure. No doubt representations and submissions to the Study Committee will be made by other industry members in this respect. For the purposes of this Submission, it is sufficient to say that the Moore recommendations regarding "non-industry capital" are overly narrow and unimaginative. In any event, if access to public financing is to be permitted in the Canadian industry, these Moore recommendations will have to be re-examined in their entirety.

Critique of Moore Rationale re Public Capital

Summary of Moore Rationale

5.21 We propose in this Submission to analyse the text of Chapter IV of the Moore Report which sets out the Moore Committee rationale as to why public ownership of member firms in the securities industry is unacceptable and, allegedly, not in the public interest. The Moore rationale may be summarized as follows:

1. undue outside influence may arise from ownership in securities of a securities firm by persons not involved directly in the securities business (Moore Report para. 4.8);

2. conflicts and potential conflicts could arise between the firm's clients and the firm's investors (Moore Report para. 4.10);

3. acquisition by outsiders of substantial interests in securities firms could be prejudicial to the maintenance of an adequate level of competition (Moore Report para. 4.11);

4. initial distribution of shares of a securities firm would, if effected by the firm itself, involve a conflict of interest in making recommendations to clients and, if effected by other member firms, would involve a lessening of competition between them and the issuing firm (Moore Report para. 4.12);

5. the maintenance of a secondary market in securities of a member firm distributed to the public would involve further conflicts of interest between the firm's clients and the firm's investors, such as giving advice in trades in its own securities and, further, would result in lessening of competition between firms (Moore Report para. 4.13);

6. a further lessening of competition among securities firms would result in connection with the formation and operation of underwriting syndicates, particularly banking groups, in that public ownership would introduce an extraneous element in inter-firm relationships (Moore Report para. 4.14);

7. the presence of public investors might militate against the effective use of sanctions because regulatory authorities would be reluctant to penalize firms having wide public participation (Moore Report para. 4.15).

A review of these adverse hypothetical considerations led the Moore Committee to conclude that public trading in securities of member firms was not appropriate for Canada, a conclusion which has since been the subject of wide-spread discussion and debate throughout the securities industry in Canada.

Rebuttal to Moore Views on Public Capital

5.22 The analysis which the Moore Committee applied to these hypothetical adverse considerations which would arise from public ownership is, in our submission, one of the least well reasoned sections

of the Moore Report. In fact, we fail to understand some of the narrative text which purported to provide reasons why the various hypothetical considerations would be contrary to the interests of the public or the securities business generally. However, to the extent that we understand the rationale of the Moore Committee on this subject, we would submit the following rejoinders to each of the hypothetical considerations set out in paragraph 5.21 above:

5% Ceiling eliminates substantial outside influence

1. "Substantial outside influence" by investors and members can readily be prevented by placing a ceiling on the percentage of outstanding shares which may be held by any individual shareholder who is not approved by the relevant regulatory authorities. The Moore Committee recommended permitted aggregate investment by outside investors of up to 40% of a firm's capital (Moore Report para. 5.44) but narrowly defined and restricted the classification of investors who may hold such 40% interest. The constitution and rules of the New York Stock Exchange provide that any shareholder beneficially owning 5% or more of the voting stock of a member corporation (not employed by the member corporation) must be approved by the board of governors of the Exchange. To ensure that the 5% rule is not inadvertently violated, maximum ownership by any non-approved person may be reduced to 5% by requiring the member corporation to redeem shares held in excess of the 5% limit or convert them to a fixed income security so as to reduce the holdings of the non-approved investor below 5%. Rule 313(f) of the rules of the New York Stock Exchange provides that each member corporation shall submit, when required, an affidavit listing those persons beneficially owning 1% or more of the outstanding shares of the member corporation.

It would seem, therefore, that there is no particular difficulty in designing mechanisms which would prevent "substantial outside influence". In fact, since no special mechanisms exist to prevent substantial outside influence over Canadian banks, insurance companies, trust companies and other financial institutions, one wonders why firms in the securities industry should regard themselves as particularly susceptible to this influence.

The Joint Industry Committee Report, while it "... adopted the reasoning and conclusions in the Moore Report that open public ownership of Canadian controlled securities firms is not appropriate in Canada at this time . . . ", did not deal specifically with the issue of substantial outside influence.

No Business Conflict with 5%ers who are Clients

2. With ownership by any non-approved investor restricted to a maximum of 5% of outstanding shares, it is difficult to treat seriously the suggestion that the impartial business judgment of a securities firm as to the merits of a given investment would be coloured by the fact that the issuer whose securities are involved owned a minority position of less than 5% in the securities firm. Similarly, it is difficult to treat seriously the other hypothetical examples of conflicts and potential conflicts of interest referred to in para. 4.10 of the Moore Report. Conflicts of interest and potential conflicts of interest are continuously present in the securities industry as in many other industries and the avoidance or resolution of such conflicts is a daily occurrence with management and employees of securities firms. In substantive terms, the existence of a conflict of interest is after all a neutral fact. It is the avoidance or resolution of the conflict or proposed conflict in accordance with best industry traditions which is fundamental. Indeed, perhaps because of this, any additional potential conflicts which public ownership might bring about would no doubt be resolved or avoided in keeping with the same standard of ethics which prevails in the industry today.

5% Limit on Individual Ownership Rules out Anti-competitive Factor

3. Article IX(7)(f) of the constitution of the New York Stock Exchange provides that no person may be an "approved person" (that is to say, the holder of 5% or more of the outstanding voting shares of a member firm) in more than one member firm. Such a restriction, if adopted in Canada, would be sufficient protection against control by any person, firm or corporation of more than one member firm so as potentially to reduce competition. The other alleged anti-competitive effects of non-industry ownership referred to in para. 4.11 of the Moore Report are not persuasively realistic.

The Joint Industry Committee Report does not refer to this consideration.

Initial Distribution Illusory Problem

4. We do not understand the problem which is anticipated to arise in connection with a securities firm distributing securities of its own issue. Ontario securities laws permit a Canadian industrial corporation to distribute its own securities if it registers itself under applicable restrictions as a securities issuer, for example by way of the issuance of subscription warrants on a rights offering. There would seem to be no evident reason why this practice should be prohibited in the securities industry. Naturally, when a securities firm was effecting a distribution to the public of its own securities, arm's length advice would no doubt be sought on such questions as offering price, etc. On the other hand, if the issuing firm engaged the services of another securities firm or firms to effect the distribution, it is difficult to understand how the Moore Committee could conclude that such transaction would ". . . introduce an extraneous consideration in the subsequent relationship . . ." between the two firms of a deleterious nature. It would, in our opinion, be sufficient protection in the public interest if the relevant Canadian regulatory authorities were to enact requirements similar to those proposed by the National Association of Securities Dealers, Inc. as set forth in a bulletin to members dated August 20, 1971.

The Joint Industry Committee Report makes a passing reference to this consideration which does not merit comment in this Submission.

N.Y.S.E. Rules Adequately Regulate Secondary Markets

5. In dealing with the question of secondary markets in shares of a securities firm, the New York Stock Exchange has provided (Rule 320(d)) that after the completion of distribution of securities a member corporation shall not effect any transaction (except on an unsolicited basis) for the account of any customer nor may it make any recommendations with respect to any security which it has issued. Control of the secondary market in securities of member firms is restricted by requiring firms to register as "market makers" and satisfy relevant requirements of the New York Stock Exchange (Rule 317). These New York Stock Exchange rules, in our view, adequately deal with any concern that post distribution marketing problems need arise for member firms which have done public issues. The other hypo-

thetical considerations in this respect set out in para. 4.13 of the Moore Report are insubstantial; for example, to state that management of a publicly-owned securities firm might for that reason be induced to place undue emphasis on the importance of high earnings is to make a point that does not merit rebuttal.

The Joint Industry Committee Report makes no specific comment on this consideration.

Public Ownership would Decrease Risk of Non-competitive Arrangements

6. To suggest that public ownership of securities firms would introduce an extraneous and adverse element in inter-firm relationships with respect to banking group arrangements is to ignore the commercial reality that securities firms underwriting public issues of Canadian corporations are obliged, in their own self-interest (in that they undertake a personal liability to purchase the securities from the issuer), to ensure that the members of the banking group are those having the greatest potential to distribute their allotment of the securities being issued. In fact, the legal obligations incumbent upon the board of directors of a corporation whose shares are publicly held should ensure that business decisions, such as participations in banking groups, are not influenced by factors other than the relevant consideration of ability to contribute to the success of the banking group.

The Joint Industry Committee Report does not comment specifically on this consideration.

Many Industries are closely Regulated Despite Public Ownership

7. The suggestion that regulation of member firms becomes more difficult when shares of those firms are held by the general public is illogical. Examples have been given above of the steps taken by the New York Stock Exchange to ensure its continued ability to regulate publicly traded member firms. It must be remembered that publicly-owned Canadian chartered banks, insurance companies, loan and trust corporations are also part of the highly regulated financial community. Similarly, corporations carrying on business in the broadcasting field, many of which are publicly traded, are subject to restrictive regulation leading, if contravened, to cancellation of licences. No suggestion has been made that public issues of such financial institutions or broadcasting corporations should be curtailed because of alleged difficulties of

regulatory supervision. The comments of Mr. E. J. Pattberg, Chairman of the Board of The First Boston Corporation, before the United States Securities and Exchange Commission made during the public ownership debate in that country are particularly appropriate:

> "We find it mildly ridiculous that the [New York Stock] Exchange feels that it can appropriately control foreign owned members such as the recently admitted Canadian firms while arguing that control of a publicly owned United States corporation is not feasible."

NON-RESIDENT OWNERSHIP

Moore Conclusion

5.23 Having analysed the question of whether additional capital is needed for the Canadian securities industry and, if so, whether it should be available from public or merely "semi-public" sources, the Moore Committee then addressed itself to the question of participation of non-resident capital in the Canadian securities industry. The Moore Committee concluded that a ceiling of 25% overall and 10% individually should be placed on foreign ownership of Canadian securities firms. With narrow exceptions, the foreign investors would have to be individuals and not foreign corporations or partnerships. In the result, a foreign securities firm could not be an investor in a Canadian securities firm.

Joint Industry Committee Conclusion

5.24 The Joint Industry Committee, on the issue of foreign ownership, adopted the recommendations of the Moore Report with two qualifications: first, the Joint Industry Committee would deprive existing foreign owned securities firms of the benefit of the Moore "grandfather clause"; secondly, the Joint Industry Committee (adopting the minority view on this point of the Moore Committee) concluded that the non-resident 10% foreign investment in a Canadian securities firm could be effected by a foreign securities firm without resulting in undue influence.

Foreign Ownership New Issue

5.25 Before embarking on an analysis of the soundness or appropriateness of the Moore conclusion, it should be noted that prior to the constitution of the Moore Committee there had been very little, if any, discussion within the securities industry itself as to the desirability or necessity of imposing restrictions or prohibitions on foreign

ownership in the industry. As we have indicated above (paragraph 3.03), no Canadian regulatory authority raised this issue with Merrill Lynch at the time of its acquisition of Royal Securities.

Present Foreign Control Insignificant

5.26 The Joint Industry Committee Report speaks of the " . . . national goal of Canadian control of the Canadian securities industry . . . ". If there is indeed such a "national goal" it was invented by the Joint Industry Committee. There can be no doubt that at the present time there is full Canadian control of the Canadian securities industry. The involvement, by any yardstick, of foreign owned firms in the Canadian securities industry is insignificant, particularly in contrast to those other Canadian industries where foreign ownership has been predominant for many years.

Moore and Joint Industry Views Anti-competitive

5.27 The effect of the recommendations of the Moore Committee and the Joint Industry Committee on this issue of foreign ownership is not to ensure that the Canadian securities industry remains in the hands of Canadians, but rather that each foreign-owned firm be Canadianized completely or virtually completely so as to exclude from the Canadian securities industry the competition of larger foreign firms. Our submission is that under the veneer of economic nationalism the Moore Report and the Joint Industry Committee Report have larded the foreign ownership issue with anti-competitive and self-interest factors.

Beware of Self-Interest

5.28 In considering the role of foreign ownership in the Canadian securities business, we would be well advised to keep in mind the admonition, oft quoted, of the Royal Commission on Banking and Finance (Porter Commission), 1964:

> " . . . [I]t should be remembered that competition is an uneasy state and that, however much they thrive under it, businessmen have an inclination to protect themselves against it. We must therefore be alert to development which would lessen competition or threaten its vigour.
>
> . . .
>
> The community as a whole stands to benefit from more open competition and it is this advantage rather than the comfort of any one group of institutions which should be sought."

Moore Assumptions re Non-Resident Ownership and Rebuttal

5.29 Turning now to an evaluation of the Moore Committee and Joint Industry Committee recommendations as to foreign ownership, it is useful first to examine the assumptions or factual premises upon which the Moore Report conclusions are based:

Alleged Risk of Canadian Investment Abroad Increasing

1. Moore Report para. 6.6 suggests that it is desirable that Canadian investors be kept informed about Canadian securities so that voluntary investment in Canada by Canadians will not be diverted from this country. The Report states, in effect, that foreign ownership in Canadian securities firms might adversely affect the propensity of Canadian investors to purchase Canadian investments. If this assumption has any validity (which we submit it has not), it is not valid with respect to Merrill Lynch or Royal Securities. It has been demonstrated above (paragraph 2.03 et seq) that Merrill Lynch has developed an extensive Canadian Research Department which makes available to clients of Royal Securities and to the world wide customers of Merrill Lynch comprehensive opinions concerning more than 380 Canadian corporations. This research activity can only stimulate increased interest in investment in Canadian companies.

Alleged Net Outflow of Investment Capital

2. Moore Report para. 6.11 states that for the fiscal years ended between April 1, 1968 and March 31, 1969 commissions earned by American controlled firms on transactions in Canadian securities for Canadian residents aggregated $10.0 million as compared with commissions earned by such firms on United States securities for Canadian residents of $17.2 million. From these "statistics" the reader is invited to conclude that there is an apparent net outflow of investment capital to the United States in securities transactions generated by the activities in Canada of United States firms. The Moore Report, however, contains no statistics as to commissions earned by United States firms in respect of the sale of Canadian securities to non-residents of Canada. It is therefore impossible to conclude, on the basis of the statistics on which the Moore Report relied, whether there has, in fact, been a net inflow or a net outflow of investment capital as a result of the activities of United States firms carrying on business in Canada. Even assuming that the facts would disclose a net

outflow of investment capital for this reason, the Moore Report statistics do not enable us to determine whether such a presumed net outflow exceeds or is less than the net outflow of investment capital generated by the activities of Canadian securities firms with offices outside Canada. It has, in any event, been demonstrated (paragraphs 2.10 and 2.11) that the business activities of Merrill Lynch and Royal Securities generate a net inflow of investment capital into Canada.

As a matter of interest, it should be noted that on May 20, 1969, in answer to a question in the House of Commons from the Right Hon. John G. Diefenbaker, the Minister of Finance stated that he did not believe that the acquisition of Royal Securities by Merrill Lynch would result in an outflow of Canadian investment capital. Hansard for the day states as follows:

> "Right Hon. J. G. Diefenbaker (Prince Albert): Mr. Speaker, I wish to ask the Minister of Finance whether his attention has been drawn to the fact that Merrill Lynch, Pierce, Fenner & Smith Incorporated, the largest investment house in the United States, and the Royal Securities Corporation of Canada have agreed to affiliate. I ask him whether this will not place or tend to place the outflow of Canadian funds under the domination of the United States, and what action the Canadian government is taking in this connection. He will recall some of the statements made by Mr. Walter Gordon, formerly minister of finance.
>
> Mr. Speaker: Order, please.
>
> Hon. E. J. Benson (Minister of Finance): May I say in answer to the first part of the question, yes, I am aware; in answer to the second part of the question, no; in answer to the third part of the question, the matter is indeed being considered."

The Joint Industry Committee, dealing with the same subject, makes the following observation:

> "The fact is that securities firms enter into foreign jurisdictions primarily for the purpose of attracting foreign capital to their home jurisdictions."

The "evidence" to support this conclusion is the same "Moore statistics" referred to above concerning commission income on transactions in Canadian and United States securities, respectively, for Canadian residents. The Joint Industry Committee conclusion based on this statistical sleight of hand should be ignored.

Foreign Ownership Alleged a Neutral Factor re Industry Efficiency

3. Moore Report para. 6.13 contains the following statement:

> ". . . the possibility that foreign ownership will, of itself, result in either less or more efficient performance by Canadian industry need not be regarded as a substantial factor in the cost-benefit analysis [of the merit of having non-Canadian controlled firms operating in the securities business in Canada]."

In our view the existence in any industry of active, responsible firms prepared to allocate capital toward improvement in procedures and methods and expansion of research and communication facilities, whether such firms be Canadian controlled or foreign controlled, cannot help but upgrade the standards of the industry generally and thereby benefit the public interest.

And again in the same paragraph the Moore Report states:

> ". . . the very fact of non-resident ownership or control does not, in our opinion, affect the efficiency of operation of securities firms in Canada."

Why the Moore Committee thought it necessary to reach this negative and unuseful conclusion is not clear. In point of fact, in our submission, the facts more likely are as stated by Professor A. E. Safarian of the University of Toronto in his report "The Performance of Foreign-Owned Firms in Canada", (1969) wherein he concludes that:

> ". . . within the sphere of purely business motivated behaviour, the economic performance of firms within Canada is primarily determined, not by nationality of ownership, but by the economic and social environment, and particularly by the Canadian policy environment, within which all firms alike—however owned—must operate in Canada."

As stated by Ivan R. Feltham and William R. Rauenbusch of the Osgoode Hall Law School of York University in their paper "Multinational Enterprises in Canada, Foreign-Owned Enterprises in Canada", August, 1971:

> "If foreign [securities] firms are prohibited, there may not be any pressure on Canadian firms to improve their efforts or indeed to maintain efficiency. The [Moore] Committee suggests that Canadian investors would go to U.S. firms if Canadian firms did not maintain comparable service. Is that in fact true? Are Canadian clients in fact mobile to such an extent? Should they be? Even if all this is true, an element of competition by foreign-owned firms on the domestic market would ensure that those questions need never be put to the test."

And, from the same paper:

> "The [Moore] Committee does not speculate whether Canadian-owned firms would be as efficient today as it says they are or, whether they would continue to be, in the absence of competition by non-resident firms.
>
> . . .
>
> A limited foreign presence in the [securities] industry is desirable to ensure that the self-regulating securities industry maintain efficient operations by world standards."

Foreign Firms' Research Alleged not Canadian-Oriented

4. Moore Report para. 6.15 makes the following observation as part of the argument against non-resident ownership:

> "Canadian firms concentrate largely on Canadian securities and clients can ordinarily obtain more information on such securities from them than from a foreign firm . . . research should be considered as a benefit provided by United States firms in Canada only in that such firms may provide a greater quantity of information concerning United States securities than could Canadian firms."

The extent to which the resources of Merrill Lynch have been applied to the development of a Canadian Research Department has been dealt with at length above (paragraph 2.03 et seq).

Merrill Lynch is, of course, not in a position to state whether its Canadian Research Department exceeds in efficiency or productivity the research departments maintained by the comparably large Canadian-owned securities firms. On the other hand, Merrill Lynch is confident that its research facilities compare favourably with those of any Canadian firm. Undoubtedly the same would be true in respect of other well-managed foreign-controlled firms.

Access to Foreign Capital Markets Alleged Unaffected

5. Moore Report para. 6.16:

> "It might be thought that the extent of access for Canadian governments and corporations to the capital markets of the United States is improved by the presence in Canada of United States securities firms. While this would be difficult to prove or disprove through statistical evidence, the studies we have made and our own observations indicate that any improvement is marginal at best."

Based on this observation, the Moore Committee concluded that ". . . even if additional United States firms were permitted to enter Canada . . . their entry would therefore not result in an improvement of Canadian access to the United States capital market".

This, we submit, is not the relevant consideration even if it could be proven to be correct. Rather, Canadians should consider whether or not denial of access of United States firms to the Canadian securities industry combined with forced Canadianization of Canadian securities firms presently foreign-owned would induce steps which could prohibit or restrict future access by Canadian governments and corporations to the United States securities market.

Necessity of Continued Canadian Access to Foreign Capital Markets

If there is a risk that exclusion of foreign-controlled firms from the Canadian securities industry would affect future Canadian access to foreign capital markets, the magnitude of the potential damage should be kept in mind. Annexed as Schedule D to this Submission is a table listing "Gross International Issues for Certain Countries" for the period from 1958 to 1965, prepared by the Committee for Invisible Transactions of The Organization for Economic Cooperation and Development of the United Nations. Such table indicates that in the 7-year period under review the dollar value of Canadian domestic

issues sold abroad exceeded the dollar value of foreign issues sold in Canada by $4,144,000,000. That is, during the period in question Canadian governments or corporations were obliged to seek capital in foreign markets to that considerable amount. Further, one analysis indicates that during the period from 1955 to 1971, inclusive, "U.S. pay" securities issued by Canadian industrial corporations totalled approximately $3,500,000,000 demonstrating dramatically the importance of access to the United States capital markets.

Financial Community International

The merit of strengthening, rather than severing, international ties between national financial markets is emphasized in the above Report of the Committee for Invisible Transactions. The report deals with the possibility of closer links between financial markets in its final chapter. Certain of the conclusions in such report should be quoted in this Submission:

> "Closer links between the financial markets should be sought through parallel measures to improve the efficiency of the national markets on the one hand and, on the other, their intercommunications. These measures should in the course of time mutually reinforce each other; greater efficiency enabling certain markets to adapt themselves better to any repercussions from capital movements, and intercommunication contributing to the efficiency of particular markets . . . Another vital condition is that the reforms and improvements that are constantly being made to national financial systems must take account of the international situation and the objective of progressive coordination of national markets . . . In general the obstacles [to links between national markets] do not reside in direct measures of intervention by the authorities . . . but in the limitations on foreign investment by certain financial intermediaries, in the tax systems, *the conditions for the introduction of securities on stock exchanges, and more generally a lack of information about possibilities of investment abroad* (emphasis supplied)".

This report, it should be emphasized, is the submission of a committee whose members included representatives of the Ministry of Finance of France, the Department of the Treasury of the United

Kingdom, the United States Treasury, the National Bank of Belgium, the Ministry of Economic Affairs of Germany, the Ministry of Finance of Japan, the Federal Political Department of Switzerland, the Ministry of Finance of Austria, the Royal Bank of Sweden, the Bank of Italy and the Spanish Ministry of Commerce.

Foreign Firms—do they Increase Inflow of Capital?

6. Moore Report para. 6.17:

> "One consequence which might be expected from an increase in the number of foreign firms operating in Canada is an increase in investment by non-residents in already outstanding Canadian securities, through the Canadian secondary markets. Such increased investment would occur only to the extent that the increase in the number of foreign firms operating in Canada resulted in sales of Canadian securities to non-resident investors who would not otherwise invest in Canada."

The Moore Committee concluded that the effect of the United States Interest Equalization Tax, so long as it remains in force, would severely restrict the purchase by United States residents of previously issued Canadian securities. That conclusion is no doubt correct. On the other hand, the degree of interest of United States securities firms in new Canadian issues has undoubtedly been enhanced by the dissemination of knowledge concerning such securities which occurs through Canadian-oriented research departments. Further, interest equalization tax notwithstanding, the ability of the United States controlled securities firms to engage in brokerage activities in the secondary markets of Canadian issues on a full rather than a shared commission basis will stimulate purchases of already outstanding securities. Exclusion of United States-owned firms from the Canadian securities industry would involve a sharing of commissions and a consequent diminution of interest in recommending Canadian securities. United States securities firms have sought memberships, directly or indirectly, on Canadian stock exchanges for the same reason that Canadian firms have obtained memberships on stock exchanges in the United States, namely, in order to increase the proportion which they could retain of commissions paid by clients for transactions in secondary securities.

Risk of Retaliation by Foreign Securities Industries Allegedly Slight

7. Moore Report para. 6.18 concludes that no reciprocal action is expected from United States regulatory authorities against Canadian firms operating within the United States if American firms were excluded and/or expelled from Canada. Merrill Lynch and Royal Securities cannot, of course, comment on this conclusion on behalf of the United States regulatory authorities. However, when such regulatory authorities are considering the degree to which Canadian firms may continue to participate in the American securities industry it may be expected that they would bear in mind the following matters:

(a) in recognition of the fact that the North American financial industry is an international and not a national industry, exemptions were provided from Interest Equalization Tax for original Canadian issues. No other nation was granted similar exempt status;

(b) in December, 1967 Rule 314.14 of the rules of the New York Stock Exchange was amended to permit ownership in member firms by Canadian citizens as well as United States citizens. We have been advised that this amendment was made specifically to facilitate the admission to membership of Nesbitt Thompson Securities, Inc. In fact, it is worth mentioning that Merrill Lynch was one of the sponsors of the admission to membership of Nesbitt Thompson Securities, Inc. Contemporaneously with the amendment, a memorandum was prepared by the New York Stock Exchange entitled "Special Practices Required of Canadian Member Firms of the New York Stock Exchange". A copy of such memorandum is attached to this submission as Schedule E. The citizens of no other nation are granted these privileges;

(c) since the date of the enactment of revisions to the constitution of the New York Stock Exchange permitting public ownership, Wood Gundy & Co. Inc. has become a member of the New York Stock Exchange and did so with the sponsorship of Merrill Lynch.

In any event, it would be imprudent to assume that the relevant governmental and regulatory agencies in the United

States would not react adversely to enforced Canadianization or expulsion of United States controlled securities firms in Canada. In this connection, it should be borne in mind that, to the extent there is a risk of retaliatory action, that action will have serious ramifications in that, according to the Moore Report, at that time 15 Canadian firms had offices in the United States, 13 were members of the Mid-West Stock Exchange and about 10 were members or associate members of the Philadelphia-Baltimore-Washington Stock Exchange or of the Boston Stock Exchange.

Moral Suasion and Foreign Ownership

8. Moore Report para 6.26 raises the issue of moral suasion as an example of the alleged difficulty of regulating foreign controlled members of the securities industry. It is, of course, true that the federal and provincial governments in Canada rely in large part upon moral suasion for implementation of policies related to the financial markets. We know of no basis in fact to support a conclusion that American-owned firms carrying on business in Canada are not responsive to moral suasion to the same degree as Canadian-owned firms. In this regard we refer to the comment by W. E. McLaughlin, Chairman and President of The Royal Bank of Canada in an address to the International Monetary Conference in October, 1970:

> "[The fear of domination] arises, I think, from the assumption, unfounded in fact, that Canadian corporations owned and controlled by foreigners will act differently from those owned by Canadians and in a way detrimental to the Canadian interest. In other words, it is a business behaviour problem . . . Certainly, whatever careful factual research that has been carried out indicates that Canadian companies owned or controlled by foreign investors are, as a rule, good corporate citizens. A recent official report by our Department of Industry, Trade and Commerce confirms this impression . . .
>
> In short, there seems to be no basis in fact, and certainly none in my own experience, for assuming that foreign owned or controlled Canadian corporations will behave in ways inimical to the Canadian interest. Corporate behaviour is not a 'real' problem of foreign investment."

Assuming that moral suasion would be less effective if the Canadian securities industry was dominantly controlled from the United States, as the Moore Committee conjectured, in point of fact the Canadian securities industry is not controlled from the United States.

Royal Securities, as one of the 15 approved money market dealers, could not fail to respond affirmatively to any moral suasion exercised by the federal government.

Foreign Laws Applied in Canada

9. "Extraterritoriality", that is the imposition of foreign laws within Canada, is simply not an issue in the Canadian securities business. The best evidence available to the Moore Committee would indicate that approximately 11% of the gross brokerage commission business generated in Canada by securities firms was generated by foreign controlled securities firms. Without foreign domination extraterritoriality is not a real issue. Neither the Moore Committee nor the Joint Industry Committee made out a case that the Canadian securities industry is dominated by foreign controlled firms or likely to be so. The evidence in fact is to the contrary; foreign controlled firms have been doing business in Canada for decades with no evidence, or threat of, foreign domination.

Limited Foreign Ownership Advisable

Key Sector of Economy

5.30 This Submission agrees with the Moore Committee conclusion that the securities industry is a "key sector" of the Canadian economy. Canadian securities firms are an integral part of the national financial community and must, therefore, be said to be a key sector of the economy for the same reasons that banks, insurance companies, loan and trust corporations, etc., are said to be "key sector" institutions.

However, as stated in the Feltham and Rauenbusch paper referred to in paragraph 5.29 above:

> " . . . as is the case with banking, key sector analysis does not lead automatically to the conclusion that there is no room for direct foreign investment. A limited foreign presence in the industry is desirable to ensure that the self-regulating securities industry maintains efficient operations by world standards. More-

over, outright limitation of foreign direct participation in the securities industry has serious regional economic implications."

Moore Grandfather Clause Protection Illusory

5.31 In our view, the above analysis demonstrates that the conclusions of the Moore Committee with respect to foreign participation in the Canadian securities industry do not stand up to close scrutiny. The Moore Report, as is well known, concluded that foreign securities firms should be prohibited from becoming member firms or from investing in member firms after the date of publication of the Report. On the other hand, the Moore Report recommended that the suggested prohibitory regulations should contain exemptions which would permit foreign securities firms with membership in the particular self-regulatory organizations at the date of publication of the Report to retain such membership. However, this "grandfather clause" protection was to be withdrawn if the firm in question or its foreign parent ". . . obtains capital in a manner significantly different from those permissible for Canadian securities firms (for example, by effecting a public distribution of its securities . . .)" and in the event of change of control or corporate reorganization. This grandfather clause protection could never have been intended to accrue to the benefit of Merrill Lynch—Royal Securities inasmuch as, when the Moore Report was published, it was clear that Merrill Lynch proposed to effect a public distribution of securities in the United States. One must conclude, therefore, that the grandfather clause was never intended by the Moore Committee to protect the investment of Merrill Lynch in Royal Securities, the very transaction which had led to its formation.

The Joint Industry Committee determined that the Moore Committee grandfather clause was too generous and that instead of exemption for foreign controlled firms presently carrying on business in Canada, there should be effective expulsion from the industry. The Joint Industry Committee Report terms this decision a "compromise approach" in that the "non-complying non-resident controlled firms" would be given a period of 18 years to Canadianize.

Buying Back Canada— "Ratio Idiocy"

5.32 The question of buying back foreign ownership in Canadian firms was discussed by W. E. McLaughlin, Chairman and President of The Royal Bank of Canada, in the recent address referred to above

(paragraph 5.29) in a manner which makes it clear that one cannot engage in a programme of economic nationalism without an appreciation of the considerable concomitant costs:

> "The substitution of foreign debt, for foreign equity investments, would have only negative effects on the Canadian economy. A reduction in foreign direct investment would mean a reduction in its fringe benefits—technology or 'know-how' and access to international marketing organizations. An increase in foreign debt investment would impose on Canadians the burden of fixed interest payments abroad and, for the first time, give reality to the now groundless fears that Canada, the international debtor, would be called to account on some day of reckoning.
>
> To these costs of buying back Canada, which are based on the assumption of successful repurchase, I would also add the costs to be incurred in attempting to implement the scheme—namely, the needless dislocation of international capital markets, which should be free to set the appropriate balance between debt and equity financing; the consequent decrease in overall capital inflows into Canada with adverse repercussions on our economic growth and the needless expansion of the government sector, inevitable whenever policy is set in defiance of market forces.
>
> Despite these evident costs, the buy back fever seems recently to have flared up again in some parts of the Canadian body politic, and is now manifesting itself in what can best be described as a 'rash of ratio idiocy'."

"Roll-back" amounts to forced auction to competitors

5.33 Canadianization, of course, would take the form of compelling Merrill Lynch to sell to Canadian residents equity shares of Royal Securities. To whom would these shares be sold? Unless public ownership is permitted, the only potential purchasers are employees of Royal Securities and competitors of Royal Securities. There can be no assurance that employee groups of foreign-owned Canadian securities firms could, at the relevant times, obtain the necessary financing to effect purchases of equity securities from the foreign owner. Nor can it be presumed that foreign parents would, as a matter of policy, necessarily conclude that ownership by employees of interests in the Canadian subsidiary was desirable or in the interests of the corporate group.

Accordingly, compulsory Canadianization could well result in forced auction to competitors. It cannot be conceived that such a result could be in the interests of the Canadian public or the Canadian economy. Such a result would be non-competitive and enure to the benefit only of Canadian-owned members of the industry.

"Grandfather Clauses" in Existing Canadian Legislation

Compulsory Roll-back Unique Concept

5.34 The Joint Industry Committee recommendation of a compulsory "roll-back" or expulsion seems to be unique. Canadian statutes in which restrictions upon foreign ownership are contained generally speaking contain sanctions designed to deny to non-residents the right to vote shares which form part of a block of shares exceeding the maximum percentage permitted under the statute to be held by a non-resident. None of such statutes contains a sanction retroactively requiring non-residents to dispose of their investment. Attached as Schedule F to this Submission is a memorandum outlining federal and provincial statutes imposing restrictions on foreign ownership of companies carrying on business in the financial field and of the foreign ownership restrictions therein contained. Such legislation, with one minor exception in Alberta, contains "grandfather clauses", that is to say, provisions which ensure that the government policy which has been translated into law does not have a retroactive effect on existing investments. Federal government policy as expressed in existing legislation seems to be "Keep Canadian what is Canadian today". For example, most of the existing statutes contain "grandfather clauses" which are more liberal than that contained in Ontario Regulation 296/71 (see Part VI below) in that they do not prevent non-residents from transferring shares they own to other non-residents provided such transfers do not thereby increase the permitted degree of foreign ownership. The first federal legislation restricting foreign ownership of financial institutions was the 1964 amendments to the Canadian and British Insurance Companies Act.

Bank Act

5.35 The most restrictive of the "grandfather" provisions appears to be that found in the Bank Act (Canada) which does not permit an individual non-resident owning more than 25% of the shares of a bank on the prescribed day to transfer his shares to other non-residents, but nevertheless permits him to continue to hold and vote the shares

owned by him on the prescribed day. This entails no enforced retroactive divestment.

Canadian & British Insurance Companies Act

5.36 The most liberal of the "grandfather clauses" is that found in the Canadian and British Insurance Companies Act (Canada), the Loan Companies Act (Canada) and the Trust Companies Act (Canada), which exempts from the foreign control restrictions:

(a) corporations of which more than 50% of the issued and outstanding shares are held for the benefit of one non-resident at the commencement of the prescribed day; and

(b) corporations incorporated after the prescribed day which, at the time of the first general meeting of shareholders, are more than 50% owned by one non-resident.

This is evidence of a Governmental policy to the effect that foreign ownership legislation should not prohibit increase in foreign control of a company which on the critical day was already foreign controlled and, further, that such legislation should not prohibit future participation in a particular industry by new corporations which from their inception are foreign controlled.

Continued Foreign Participation Without Acquisitions

No Risk of Domination by New Foreign Participants

5.37 If the "turn-over" problem in the industry is in fact the root of the concern of the members of the two Committees, then it would be easy enough for governments to prohibit takeovers or acquisitions of existing Canadian securities firms, while at the same time leaving open access to the Canadian securities industry by newly formed non-resident owned securities firms. Just as it would not be conceivable for a newly formed foreign-owned Canadian chartered bank to dominate the banking field in Canada, so it cannot be assumed that a newly formed foreign controlled securities firm could come to dominate the mature Canadian securities industry. To paraphrase a statement in the Feltham and Rauenbusch paper, if the "turn-over" problem renders Canadian-owned firms easy prey to foreign takeovers, surely the best way to solve that problem is to prevent further takeovers of existing firms by foreign interests. To use the "turn-over"

problem as a pretext for prohibiting the establishment of new foreign-owned firms or for expelling existing foreign-owned firms is quite another matter.

Preventing Domination through Limiting further Acquisitions is the Only Justifiable Control on Foreign Participation

5.38 The acquisition of Royal Securities by Merrill Lynch in 1969 has not resulted in foreign participation in the Canadian securities industry increasing to the extent of domination by foreign owners. However, future acquisitions by foreign securities firms could have this effect depending, of course, on the size and prominence of the Canadian firm being acquired. It is, therefore, a matter for governmental policy to determine the extent to which further takeovers of existing firms by foreign interests should be restricted or prohibited in order to prevent foreign domination. As indicated above in this Submission, foreign ownership in the Canadian securities industry (measured by gross commission revenues) is thought to be approximately 11%. Governmental policy should determine whether or to what extent such percentage ownership by foreign investors should be allowed to increase.

If governmental policy determines that future acquisitions of Canadian securities firms by foreign investors should be curbed, this Submission recommends that such a goal may be best achieved in a manner similar to that adopted by the federal government in connection with its foreign ownership legislation, namely, by prohibiting further acquisitions of Canadian-owned firms without enforced Canadianization and retroactive roll-back.

Competition from Foreign Publicly Capitalized Firms

Temporary Capital Freeze

5.39 One issue remains to be dealt with: the Moore Committee was concerned that the much smaller size of the Canadian securities industry vis-a-vis the United States securities industry would lead to anti-competitive consequences if public issues of United States securities firms with operations in Canada were to take place. It is the view of this Submission that the solution to this particular concern is to permit Canadian firms to seek public financing. The inevitability of this development has been discussed above. In the meantime, however, it would only be fair to stipulate that Canadian securities firms with publicly owned foreign parents should not be permitted to make

available to their Canadian subsidiaries proceeds of issues effected in the foreign jurisdiction. Merrill Lynch has extended to the IDA and to the Joint Industry Committee an undertaking, which was not accepted, that such a restriction would be applicable to the Merrill Lynch-Royal Securities organization. Any such restriction would not, of course, apply to any introduction of capital which might be necessary to enable a foreign-controlled firm to Canadianize its operations in keeping with Regulation 296/71, as amended, or in keeping with future legislative or regulatory requirements.

VI COMPARISON OF REGULATION 296/71 AND THE JOINT INDUSTRY COMMITTEE PROPOSALS

Summary of Joint Industry Committee Proposals

6.01 On July 28, 1971 the Joint Industry Committee Report was published and circulated to members of the sponsoring institutions. The recommendations of the Joint Industry Committee may be summarized as follows:

1. Ownership by any single non-resident person, firm or corporation in a Canadian securities firm should be limited to 10%; ownership by all non-residents is to be limited in the aggregate to 25%;

2. As a concession to smaller firms, however, until March 31, 1986 a non-resident may have an investment in a Canadian firm exceeding 10% up to the lesser of $250,000 or 25%;

3. All shareholders of non-resident controlled firms who are employed by or manage the firm, and those having effective control or more than 10% ownership therein, must be approved by the relevant Canadian regulatory bodies;

4. The Moore Report "grandfather clause" is rejected and the Joint Industry Committee recommended that the maximum capital a non-resident controlled firm might employ in Canada be the minimum required by the sponsoring bodies during a fiscal year ended not later than March 31, 1971 plus 10% of the firm's net earnings per annum thereafter;

5. A non-resident controlled firm would be entitled to retain an additional 1.2% of earnings for each 1% of equity acquired by Canadians provided that it became Canadianized at least in accordance with the following schedule:

   15% by 1974
   30% by 1977
   45% by 1980
   60% by 1983
   75% by 1986

6. Any foreign controlled firm which raised capital by a public distribution of shares or in which control changed *must* proceed

to Canadianize itself under the schedule above (which is only optional for other non-resident firms); and

7. Each non-resident controlled firm must establish a Canadian company to take over its operation in Canada by March 31, 1972.

Summary of Regulation 296/71, as Amended

6.02 More than a week prior to the publication of the Joint Industry Committee Report, Regulation 296/71, promulgated by Order-in-Council under The Securities Act, 1966 (Ontario) was enacted. Such Regulation was subsequently amended by Ontario Regulation 337/71 and is reviewed here as so amended. Regulation 296/71, as amended, differs in major respects from the recommendations in the Joint Industry Committee Report. This Submission suggests, in fact, that in view of the policy statement from the Ontario Government made on July 14, 1971 and the subsequent enactment of enabling Regulations under the Ontario Securities Act, it is difficult to comprehend how the Joint Industry Committee could persuade itself that the publication of its report was either in the public interest or in the interest of the securities industry. Particularly is this so of The Toronto Stock Exchange, one of the institutions which sponsored the Joint Industry Committee, in that it is a provincially incorporated institution deriving its authority from the Ontario Government.

6.03 The effect of Regulation 296/71, as amended, may be summarized as follows:

1. Subject to the following, registration as an advisor, dealer or underwriter may be granted to a company only if (i) the aggregate number of equity shares beneficially owned, directly or indirectly, by non-residents, or over which non-residents exercise control or direction, is not more than 25% of the total outstanding equity shares, (ii) not more than 10% of such equity shares are owned beneficially, or controlled or directed by any one non-resident and (iii) the company is incorporated in Canada;

2. Notwithstanding the foregoing, the Ontario Securities Commission may, where in its opinion it is not prejudicial to the public

interest, grant registration notwithstanding non-compliance with the above conditions;

3. With respect to companies which hold registration granted prior to July 14, 1971, such registration may be continued or renewed provided that no transfer of equity shares or the beneficial interest therein including their control or direction is made to a non-resident if to do so would have a material effect on the control of the company, except with the consent of the Commission or unless the resulting ownership would comply with the conditions set forth in paragraph 1 above.

DIFFERENCES BETWEEN JOINT INDUSTRY COMMITTEE REPORT AND REGULATION 296/71

6.04 As suggested above, substantial distinctions are evident between the Joint Industry Committee Report and the policy of the Province of Ontario as represented by Regulation 296/71, as amended. Such distinctions may be summarized as follows:

Joint Industry Recommends Retroactive Expulsion

1. The Ontario Government has recognized the right of existing non-resident controlled securities firms to continue to carry on the business activities in which they were lawfully entitled to engage prior to July 14, 1971, so long as there is no change in corporate ownership having a material effect on the control of the company. A comparable right is extended to firms which were in the process of obtaining registration as at July 14, 1971. The Joint Industry Committee has recommended, by contrast, that non-resident owned securities firms be obliged, if they or their affiliates have raised capital by "going public", to Canadianize themselves (presumably by sales to their Canadian competitors) to the extent of 90% by 1989.

   The effect of the Joint Industry Committee recommendations is, accordingly, expulsion from the Canadian securities industry by way of retroactive expropriation of ownership. The extraneous explanation offered by the Joint Industry Committee for this unparalleled and drastic recommendation is that optional Canadianization should give way to compulsory Canadianization when the parent of the foreign-owned securities firm has obtained

capital in a manner which the Moore Report recommends not be available, at the present time, to Canadian-owned securities firms. This Submission has strongly recommended that there be no restriction on Canadian securities firms effecting public distribution of their securities. Whether or not such recommendation accords with the ultimate views of the Study Committee or the provincial Government, that issue should not, particularly at the behest of self-regulatory bodies, be used as a lever to effect, retroactively, deprivation of prior foreign investments in Canada. As the Moore Committee itself said ". . . Canada cannot afford unsuccessful experiments with its securities industry, particularly in view of the importance of that industry to the national economy . . .", and again:

> "Persons who make investments in securities firms on the basis of [existing] rules could not be deprived of their investment without expropriation, unless they were prepared to sell."

Joint Industry Committee Recommends Discriminatory "Capital Freeze" for Foreign Owned Firms

2. The Ontario Government, as a policy matter, did not see fit to impose restrictions upon the capital sources to which foreign controlled securities firms could resort. By contrast, the Joint Industry Committee recommends that foreign controlled securities firms in Canada be severely restricted as to capital sources by confining permitted capital to the minimum required for the firm by the sponsoring bodies during the fiscal year ended not later than March 31, 1971 plus 10% of net earnings in each subsequent year. It is to be noted that this suggested "capital freeze" relates not to capital actually employed in the particular business during the period in question but to the minimum capital stipulated by, for example, The Toronto Stock Exchange. Inasmuch as the Merrill Lynch capital employed in the Canadian businesses substantially exceeds such required minimum, an immediate reduction in facilities and services to the investing public would be necessitated by this drastic suggestion. The Joint Industry Committee concluded nevertheless that without this "capital freeze" the non-resident controlled firm:

> ". . . could increase its capital base and ability to expand by plowing back all its Canadian earnings. They

would have the ability to do so since they would have an additional source of earnings outside Canada in the parent company, usually the only shareholder."

This Submission has already stated that a prohibition against bringing into the capital of foreign-owned securities firms the proceeds of issues made in the foreign jurisdiction would be reasonable Given this restriction, the recommendation of the Joint Industry Committee in this respect can only be anti-competitive. The proposed restrictions are discriminatory in that they are not intended to apply to Canadian securities firms. How can this recommendation be justified on any grounds of public interest?

VII SUMMARY OF SUBMISSIONS

7.01 The recommendations of Merrill Lynch and Royal Securities concerning the issues embraced by the terms of reference of the Study Committee and considered and reviewed above may be summarized as follows:

Primary Recommendations

Moore Conclusions re Present Capital Sources Erroneous

1. In considering the necessity of access to public capital, the Moore Committee erroneously concluded, as contemporaneous and subsequent events have demonstrated, that currently available capital sources will be adequate for the anticipated future needs of the industry. Having reached such conclusion, the Moore Committee, leaving public interest issues behind, addressed itself to permitted limited access to "non-industry capital" as the solution to the industry "turn-over problem". This Submission concludes that the assumptions made by the Moore Committee concerning the adequacy of historical sources of capital for future needs were unwarranted and provably shortsighted. Accordingly, this Submission concludes that the recommendations of the Moore Committee as to limited access to "non-industry capital" are irrelevant as an answer to the pressing problems of obtaining increased capital to stabilize and enable the expansion of the Canadian securities industry.

Public Capital Desirable

2. Access to public capital is desirable for the Canadian securities industry and should be permitted. Such access can be accomplished without decreasing the effectiveness of regulatory controls by means of the adoption of constraints and regulatory requirements similar to those established by the New York Stock Exchange for the purpose of accomplishing similar objectives.

Limited Foreign Participation a Net Benefit to Canada

3. The members of the Moore Committee and the Joint Industry Committee, on which Committees there was (except for Moore himself) no outside non-industry representation, misled themselves on the issue of foreign ownership of Canadian securities firms. Foreign ownership in the Canadian securities industry is insignificant, as contrasted to the foreign domination of other segments of the economy. After many decades of limited foreign-

owned participation in the Canadian securities business, there is no domination or realistic threat of domination. The public interest would benefit from the competitive effect of continued limited foreign ownership in the Canadian securities business.

Government Policy may Require Prohibition on further Acquisitions

4. The industry "turn-over" problem will, in the absence of constraints, in all likelihood lead to increased foreign ownership of existing Canadian-owned firms. In view of the fact that the securities industry is a key sector of the Canadian economy, it is in the best interests of the Canadian securities industry to avoid foreign domination. It is the recommendation of this Submission that if governmental policy is formulated against foreign domination, this goal may best be achieved by a prohibition against further acquisition of Canadian securities firms by foreign investors similar to the restrictions which have been imposed in existing federal legislation relating to financial institutions. There is no necessity for the imposition of restrictions upon the entry into Canada of foreign securities firms which wish to establish new businesses in Canada.

Secondary Recommendations

Enforced Canadianization Discriminatory and Retroactive

1. Compulsory Canadianization, amounting to expulsion, for existing foreign-owned securities firms is discriminatory and retroactive. The recommendations of the Joint Industry Committee in this respect are self-serving and unrelated to any public interest factor. The Joint Industry Committee's further recommendations with respect to "capital freeze and compulsory earnings payout" of foreign-owned firms are equally discriminatory and anti-competitive.

Limited Capital Freeze if no Public Ownership Allowed for Canadian Firms

2. If the appropriate regulatory authorities determine, in spite of a preponderance of evidence to the contrary, that public ownership of Canadian securities firms should not now be permitted, it is only reasonable that foreign controlled securities firms whose parents have had access to public capital in the parent company's jurisdiction should not be permitted to make that capital available to the Canadian subsidiary except to the extent necessary to enable compliance with relevant legislative and regulatory requirements.

SCHEDULE A

MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED

Participations in "U.S. Pay" Canadian Issues
1966 to May 26, 1971

Off'g Date	Issuer	Description of Issue	Total Amount	Merrill Lynch Partici-pation	Sales
1966			($000)	($000)	($000)
3/31	Massey-Ferguson Ltd.	Common With Rights	73,162	732	755
6/28	British Columbia Hydro & Power Authority	Debs.-5 5/8-91	50,000	2,500	2,007*
11/16	City of Montreal	Debs.-6 -69	25,000	600	323
11/16	City of Montreal	Debs.-6 -2006	30,000	700	725
11/16	New Brunswick Electric Power Comm.	Gtd. bds.-6 -91	17,500	800	700
			195,662	5,332	4,510
1967					
7/19	MacMillan Bloedel Ltd.	Debs.-6 1/2-92	30,000	675	342
1/11	British Columbia Hydro & Power Authority	Gtd.bds.-5 7/8-92	50,000	2,500	2,510*
1/29	Province of Nova Scotia	Debs.-5 7/8-92	40,000	1,600	1,340
6/14	British Columbia Hydro & Power Authority	Gtd.bds.-6 1/4-92	50,000	2,500	2,550*
6/27	Province of Nova Scotia	Debs.-6 1/4-92	35,000	1,400	1,262
9/26	Montreal Catholic School Comm.	Debs.-6 3/4-92	25,000	1,000	2,790
10/ 4	New Brunswick Electric Power Comm.	Gtd.bds.-6 1/2-92	15,000	650	525
10/17	Province of Nova Scotia	Debs.-6 1/2-92	35,000	1,375	1,083
7/20	Canadian Pacific Railway	Eq.tr.cert.-6 3/8-92	25,020	550	974
			305,020	12,250	13,376
1968					
9/25	Oneida Ltd.	Common With Rights	6,639	331	319
1/23	Province of Nova Scotia	Debs.-7 -93	40,000	1,570	1,670
2/ 1	New Brunswick Electric Power Comm.	Gtd.bds.-6 7/8-93	15,000	650	735
3/28	Int'l Nickel Co. of Canada Ltd.	Debs.-6.85-93	150,000	2,000	1,993
4/17	New Brunswick Higher Educ. Comm.	Gtd.bds.-7 -93	20,000	575	780
5/15	Montreal Catholic School	Debs.-7 1/2-93	20,000	800	657
5/22	Newfoundland & Labrador Power Comm.	Debs.-7 3/4-93	25,000	1,000	1,150
5/28	Gov't of Canada	Debs.-6 7/8-88	100,000	2,000	1,505
7/25	Province of Nova Scotia	Debs.-7 1/4-93	25,000	1,000	1,072
9/17	Province of New Brunswick	Debs.-6 7/8-91	20,000	500	500
11/ 7	Province of Nova Scotia	Debs.-7 1/4-93	35,000	1,350	1,374
2/20	Canadian Pacific Railway	Eq.tr.cert.-6.90-83	20,025	475	584
			476,664	12,251	12,339

*Merrill Lynch co-managed.

SCHEDULE A (continued)

MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED

PARTICIPATIONS IN "U.S. PAY" CANADIAN ISSUES

1966 TO MAY 26, 1971

Off'g Date	Issuer	Description of Issue	Total Amount	Merrill Lynch Partici-pation	Sales
			($000)	($000)	($000)
1969					
6/19	Genstar Ltd.	Common Stock	11,600	217	848
7/23	Banff Oil Ltd.	Common Stock	8,400	192	2,048
10/ 8	French Petroleum Co. of Canada	Common Stock	8,300	249	1,245
2/20	Province of Nova Scotia	Debs.-7 5/8-94	30,000	1,200	1,200
4/ 2	Hudson Bay Oil & Gas	Coll.tr.bds.-7.85-94	25,000	800	800
5/27	City of Edmonton	Debs.-8-94	25,000	710	800
7/24	Province of Nova Scotia	Debs.-7 5/8-94	35,000	1,350	1,350
11/13	Province of Nova Scotia	Debs.-9-94	35,000	1,350	1,335
6/26	Canadian Pacific Railway	Eq.tr.cert.-8 1/4-84	30,000	650	450
			208,300	6,718	10,076
1970					
3/ 5	Aluminum Co. of Canada, Ltd.	Debs.-9 1/2-95	100,000	1,200	2,320
3/ 3	Quebec Hydro-Electric Comm.	Debs.-9 1/4-95	60,000	2,400	10,256*
3/19	Province of Nova Scotia	Debs.-9 3/4-95	20,000	775	775
7/15	Province of Nova Scotia	Debs.-9-76	25,000	925	1,275
8/12	Quebec Hydro-Electric Comm.	Debs.-9 1/2-97	75,000	4,750	8,250*
12/17	Quebec Hydro-Electric Comm.	Debs.-8 3/4-99	75,000	4,750	9,475*
			355,000	14,800	32,351
1971					
3/18	Province of Nova Scotia	Debs.-7-78	20,000	700	300
3/24	Province of Newfoundland	Debs.-8 3/4-96	25,000	900	971
4/21	Province of Ontario	Debs.-7.85-2001	100,000	4,000	5,150
5/26	Province of Quebec	Debs.-8-78	30,000	2,081	3,900*
5/26	Province of Quebec	Debs.-9-97	70,000	4,600	7,938*
			245,000	12,281	18,259

*Merrill Lynch co-managed.

SCHEDULE B

TORONTO STOCK EXCHANGE
TORONTO

NOTICE TO MEMBERS — May 23rd, 1969.
No. 599

NON-RESIDENT OWNERSHIP OF MEMBER FIRMS

The Toronto Stock Exchange has informed the nine U.S.-based Members that the Board of Governors of the Exchange is contemplating a policy which would henceforth impose a formal limit on the degree of non-resident ownership or control of member firms. Under such a proposed policy, the Board while not opposed to the investment of capital by non-residents in member firms, would require that at least 55% of the beneficial ownership of each member firm be held by Canadians.

Member houses owned and controlled by non-Canadians have been active members of this Exchange for a number of years. The presence of these member houses in Canada has presented a substantial degree of competition and many Canadian members would readily agree that this form of competition has been advantageous in many respects. The nine American-owned firms of this Exchange have been good corporate citizens of Canada and their seat-holders, all Canadians, have contributed to the Canadian financial community in very substantial ways. At the same time there has been a strong feeling on the part of many that the number of American members should not increase beyond the present complement.

The acquisition of Royal Securities by Merrill Lynch however, has added a new dimension to the problem and is causing very real concern. The concern is based, of course, on the anxiety that there be a continuation of a substantial Canadian element in the Canadian securities community. There has been no suggestion that Merrill Lynch has acted beyond the existing policy limits of the Exchange which would apply equally to any other member of the Exchange.

The investment process is a vital one for the Canadian economy. It should be responsive to purely Canadian objectives and purposes.

Its proper functioning is vital to both the public and private sector. In this respect it is akin to other financial institutions such as banks, trust companies and insurance companies. This is why the reaction to the further expansion of non-Canadian member houses by the acquisition of Canadian firms is causing such immediate and widespread public and private concern. This concern is not solely or principally confined to the straight brokerage functions of a member but also extends to the underwriting and distribution of new securities issues and money market and quasi-banking functions.

Accordingly, the Board of Governors of the Exchange is contemplating a policy which would henceforth impose a formal limit on the degree of non-resident ownership or control of member firms. Under such a proposed policy, the Board while not opposed to the investment of capital by non-residents in member firms, would require that at least 55% of the beneficial ownership of each member firm be held by Canadians.

In view of the probable adoption of a minimum Canadian ownership policy, the Board is most anxious that all members be promptly informed of this likelihood. It is not contemplated that the new policy would be retroactive to member houses which are already approved but would apply to any future acquisitions of Canadian member firms.

The Board, hopes that as an ultimate objective, all member firms would come within the proposed policy. In the letter to the U.S. based firms it was indicated that the Exchange would welcome any suggestions on the part of these firms as to how this could be accomplished with their active co-operation and support.

Before the formal adoption of a new policy in this area, the Exchange desires to discuss its implications with both Canadian and American member firms, other bodies representing the interests of the financial community and the two levels of government which have already expressed opinions on the subject.

BY ORDER OF THE BOARD OF GOVERNORS

J. R. KIMBER,
President.

SCHEDULE C

M. F. Educational Circular No. 336

NEW YORK STOCK EXCHANGE, INC.

Department of Member Firms

July 16, 1971.

To: Managing Partner/Officer, Partner or Officer Responsible for Capital Compliance, and Individual Members Not Associated with Member Organizations

Subject: Revision of Exchange Rules 325, 313 and 320 and Adoption of Rule 326

At its meeting on July 15, 1971, the Board of Governors formally adopted the recommendations of the Industry Capital Committee to amend the net capital rule and related rules. In general terms, some of the changes as a result of the Board action are described in the following paragraphs:

The changes in the rules impose greater haircuts on proprietary security positions under certain circumstances, including haircuts on commercial paper and increased haircuts where an undue concentration exists. These new haircuts are generally greater than those which existed prior to this amendment. The rules also impose a 100% charge to capital of the market value of short security differences on the 45th day following discovery or, if discovered during an audit which is filed in less than 45 days, on such earlier filing date. The rule also specifies that cash and security dividends and interest receivable outstanding 30 days or more are to be a 100% charge to capital.

The maximum capital ratio is reduced from 2000% to 1500%. The minimum dollar capital requirement for member organizations which carry customer accounts, service customers from more than one office, effect principal transactions or have a corporate affiliate or corporate subsidiary, is raised from $50,000 to $100,000. The minimum

dollar capital requirement for member organizations which introduce customer accounts on a fully disclosed basis and employ registered representatives is raised from $25,000 to $50,000.

With respect to the form and permanency of capital, the rule requires that all capital must be contributed initially for a minimum of one year, and that it can be withdrawn only upon six months' prior written notice. All subordinated capital must be contributed through printed standard forms, which may be modified only as permitted by the Exchange to strengthen the permanence of capital.

The rule provides that if the withdrawal of capital, after the required notice period, would cause the capital ratio to exceed 1200%, the repayment of the capital would be suspended indefinitely until the member organization was in such financial condition as to permit the withdrawal. In the event that the firm has been unable to permit the withdrawal of capital for the period of one year from the original date of notice (in other words withdrawal has been suspended for six months), the member organization will be required, by contractual agreement with the capital contributor, to liquidate its business. In addition, the rule requires that all securities contributed as capital be fully paid for securities and be collateral to secured demand notes with a stated face amount which must be maintained. If at any time the capital requirements value of the collateral is less than the unpaid balance of the secured demand note the member organization shall notify the lender. One of three things must happen after such notice:

(1) The lender may, with the prior consent of the Exchange, reduce the principal amount of the secured demand note by 15%. Such approval would not be given if the reduction would cause the capital ratio to exceed 1000%.

(2) The lender may contribute additional collateral.

(3) Unless the unpaid principal amount of the note is reduced or additional collateral is pledged, the collateral securing the note shall be sold by noon on the day following the giving of the notice.

The Exchange has filed with the Internal Revenue Service a request for a ruling that the interest and other payments made for subordinated capital contributed pursuant to the proposed new standard

forms of agreement will be deductible as an ordinary business expense for the borrowing member organization. To date the Exchange has not received such a ruling and, as has been noted, certain provisions of the revised rule will not become effective until a favorable tax ruling is reached.

The rules permit temporary infusion of capital for unusual underwriting commitments. Member organizations would be limited in their use of this type of temporary capital to three occasions per year. This form of capital can be contributed only by insiders, can be of cash or securities, including margin account equities, is to be documented on the standard forms prescribed by the Exchange and cannot be repaid if repayment would cause the capital ratio to exceed 1000%.

The provisions of Rule 326 prohibit a member organization from expanding if its capital ratio exceeds 1000% or if its capital ratio will exceed 1000% as a result of withdrawals during the next six months. This rule further requires a reduction of business if the capital ratio is greater than 1200% or if withdrawals scheduled during the next six months would cause the ratio to exceed 1200%.

The effective date of the various provisions of this proposal is August 1, 1971, with the exception of the following:

(1) Effective July 15, 1971, no new margin account subordinations are permitted.

(2) New capital contributions must meet the new requirements commencing three months after receipt of a favorable tax ruling from the IRS.

(3) Any present arrangement whereby a member organization is using a "put" as a medium for obtaining capital value for control stock or other restricted securities must be eliminated by August 1, 1972.

(4) All existing capital in the form of margin account subordinations must be eliminated by August 1, 1972.

(5) All insider capital must conform to the new requirements within one year of receipt of a favorable tax ruling.

(6) All existing capital contributed by means of customer subordinations must conform to the new requirements within two years of receipt of a favorable tax ruling. Further, at least ⅓ of this capital must conform within one year of the receipt of the tax ruling, ⅔ must conform within 18 months of receipt of the tax ruling, and 100% must conform by the end of the second year after receipt of the tax ruling.

(7) Exceptions from the above effective dates can be granted only by the Board of Governors upon application filed within one year from receipt of a favorable tax ruling.

(8) "Delayed Effect Election" clause in Rule 325 permits member organizations to use old haircut percentages for 90 days with respect to pre-acquired assets. Also, the concentration charge may be deferred for a limited period by the Board of Governors if a suitable plan for elimination is submitted and followed.

Attached is the revised text of Rule 325 and the related rules, together with copies of the standard forms for subordinated capital. We realize that these changes are extremely complicated and cover a broad range of subjects. We encourage you to study the attached rules and forms carefully and to direct any questions to the Department of Member Firms, as follows:

Haircuts, concentrations, short security differences and minimum net capital requirements—Principal Examiners—(212) 623-6923, 6924, 6925, 6926, 6927, 6931, or 6059.

Standard Forms for contribution of subordinated debt—William G. Carr or George B. Diskin at (212) 623-5247 or 623-5246.

Expansion or reduction of business requests for exceptions to subordinated loan requirements—Supervising Coordinator assigned to your firm.

(signed)
FRED J. STOCK, JR.
Associate Director

SCHEDULE D

Table 41. Gross International Issues For Certain Countries

(Totals for the period 1958-65)

In millions of dollars

Country	Foreign issues on domestic market[1]	Domestic issues abroad: Total	Domestic issues abroad: of which Euro-market	Balance (+ sign indicates net export of capital)
Belgium	132	393	239	— 261
Canada	23	4,167	—	—4,144
France	68	253	30	— 185
Germany	418	250	42	+ 168
Italy	120	264	124	— 144
Japan	—	698	167	— 698
Netherlands	282	88	38	+ 194
Norway	—	502	220	— 502
Switzerland	939	41	28	+ 898
United Kingdom	1,000	460	46	+ 540
United States	8,286	413	330	+7,873

1. Including International Organizations.

Source: Tables C.c. 1.3 in Statistical Annex to present report.

SCHEDULE E

Memorandum

Subject: Special Practices Required of Canadian Member Firms of the NYSE

Consideration of extending NYSE membership to non-U. S. securities firms encompasses a determination that the methods of doing business in the country of origin, the country's national monetary policies, and other practical considerations make it realistically possible for the Exchange to enforce its standards of financial responsibility and business conduct over firms controlled by foreign nationals.

This has proved possible over the years in the case of J. R. Timmins & Co. in Canada. Exchange examiners review the books and records of J. R. Timmins & Co.'s New York and Toronto offices. The similarity of accounting practices, language, business methods and geographic location of the two countries has facilitated normal Exchange surveillance over the Canadian firm.

Canadian bankruptcy laws are different from U. S. federal bankruptcy law and are more nearly akin to the law which prevailed in this country prior to the 1938 amendment of our law which specifically covered the bankruptcy of stockbrokers. Under the present bankruptcy law of the U. S., customers who are entitled to immediate possession of securities without the payment of any amount to the bankrupt, and who are also able to identify specifically those securities in the manner required by the law, may recover them in kind. The other customers, however, are not relegated to the status of general creditors. Our bankruptcy law gives such other customers priority over general creditors by permitting them as a single group to share in the single and separate fund created by our law and comprised of customers' property which cannot be specifically reclaimed. If their claims are not satisfied from that fund, they then participate along with general creditors in the balance of the general estate.

Under Canadian law, there is nothing akin to the single and separate fund. Customers who are not able to trace their securities

under Canadian rules and thereby reclaim them are treated like general creditors and share along with the general creditors in the bankrupt's estate. If a stockbroker goes bankrupt with assets located in both Canada and the United States, whether the stockbroker is a Canadian or a United States firm, those assets located in Canada in all probability would be administered under the Canadian bankruptcy law and those located in this country would be administered under the United States bankruptcy law. Of course, a Canadian firm would be apt to have a much larger percentage of its assets in Canada than would a United States firm.

The differences in the bankruptcy laws of the two countries could well have an impact on the Special Trust Fund of the NYSE. If it were decided to use Special Trust Fund monies to make whole customers whose unidentified property is held in Canada, it might be necessary to expend more Trust funds to accomplish this purpose than would be necessary if the property were held in the United States. For example, if Special Trust Fund monies were used to purchase the claims of customers of a bankrupt firm, the Exchange in asserting those claims in Canada would not enjoy the priority in respect to the single and separate fund over the bankrupt's general creditors which it would have in asserting its claims in the United States. The result might be that the Exchange could recover a greater percentage of its claim in the United States bankruptcy than it could in the Canadian bankruptcy.

It is impossible, however, to say with certainty that greater expenditures from the Special Trust Fund would be necessary in the case of a bankruptcy governed by Canadian law than would be necessary if the bankruptcy were governed by United States law. The circumstances of the individual case would control and might lead to a different result. For example, under the old U. S. law or the current Canadian law an individual customer under particular circumstances might fare better than he would under the present U. S. law, although customers as a group fare more equitably under the present U. S. law.

In order to minimize the possibility of exposure of the Special Trust Fund from the failure of a Canadian member firm, it is required that a Canadian member organization restrict its activities to an agency business as a securities and commodities broker, plus related

minimal risk activities such as investment advisory service, corporate financing advice, merger deals, etc., and that any underwriting and firm trading be done in a non-guaranteed corporate affiliate, as provided in Rule 321. This would also aid in the application of Rule 325 (capital requirements) with respect to the treatment of Canadian government, provincial, municipal and corporate bonds. Such foreign bonds under Rule 325 are usually subjected to a 30% penalty by applying the capital rule governing corporate bonds. This would be a hardship to Canadian firms which would be relieved by carrying such positions in a wholly-owned non-guaranteed corporate affiliate, in accordance with Rule 321. Such an affiliate would be subject to Canadian capital requirements which give more favorable treatment to Canadian government bonds.

As a further step toward equalization of related practices in the two countries, special loan agreements with Canadian banks should contain provisions required in bank loan agreements in this country as a result of Section 8 of the Securities Exchange Act of 1934 and the rules thereunder. If this were not required by U. S. law, the NYSE doubtless would require it under Exchange rules as part of its policies for protecting public customers. Under the 1934 Act the broker may not subject securities carried for the account of any customer to the lien for any loan except a loan which was obtained by the pledge of customers' securities. There is no provision similar to Section 8 in the Canadian banking law or in the securities laws of the various provinces. However, it is Canadian counsel's opinion that the same result can be achieved by separate agreements between Canadian brokers and their banks and that such agreements would be valid and binding on the parties. Such agreements are required for Canadian members of the NYSE. (Exhibit C).

To comply with other requirements of Section 8 of the 1934 Act Canadian firms also agree with the Exchange (a) not to pledge any customer's securities with the securities of any other customer without first obtaining the written consent of each such customer and (b) not to borrow against customers' securities in an amount greater than the aggregate amount owed to the firm by all customers in respect of those securities. This is accomplished by the form of agreement attached as Exhibit B.

In an effort to give U. S. customers of future member firms domiciled in Canada the favorable level of protection of U. S. rather than Canadian bankruptcy laws, it is also required that securities of U. S. customers be held in the U. S. and that sufficient other assets be held in the U. S. to equal liabilities to U. S. customers and to U. S. non-customer creditors, plus 5%, plus normal Rule 325 haircuts (debit items) on any such non-cash items. This is a rough equivalent of the normal Exchange capital requirement, applied to the U. S. part of a Canadian firm's business. A simplified example is shown in Exhibit D.

The Exchange's Excess Fidelity Bond and fidelity bonds required by Rule 319 for member organizations apply to both foreign and domestic activities.

Section 2 of Article IX of the Constitution requires that a member be a citizen of the United States. Under Rule 314, consequently, some U. S. ownership is still required for Canadian firms as that rule provides that a Member must have from a 1/64th of 1% to 15% interest in the member organization, varying with the size of the working capital of the firm.

It is possible for Canadian securities firms to service U. S. accounts through incorporated guaranteed subsidiaries in the U. S. as described under Rule 322; but customer accounts must be carried by the parent organization.* It is also possible that a present member of the Exchange might join a Canadian firm or that a U. S. citizen domiciled in Canada might become a member of the firm.

Principals and employees of NYSE member organizations having supervisory responsibilities or contact with public customers are required to meet minimum Exchange prescribed standards. Information about these standards and procedures is given in Exhibit F.

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*An exception may be granted to that part of Rule 322 requiring the parent organization to carry accounts of its U. S. guaranteed subsidiary.

SCHEDULE F

Restrictions on Foreign Ownership of Canadian Financial Institutions

A. Federal

1. *The Bank Act, R.S.C. 1970, Chapter B-1*

Ownership

The basic policy of the Bank Act is that non-residents may not, in the aggregate, own more than 25% of the issued capital stock of a federally chartered bank. In addition, no one person (plus associates), whether non-resident or resident, may own more than 10% of the issued capital stock. Further, governments, including foreign governments, may not own shares in the capital stock of a bank.

To be more specific:

(a) A bank shall refuse to transfer a share of its capital stock to a non-resident if, when the aggregate number of issued shares held by non-residents already exceeds 25% of the total issued shares, such transfer would increase the percentage of such shares held by non-residents. (Section 53(1)(a)).

(b) A bank shall refuse to transfer a share of its capital stock to a non-resident if, when the aggregate number of shares held by non-residents is 25% or less of the total issued shares, such transfer would cause the total number of such shares held by non-residents to exceed 25% of the aggregate number of issued shares. (Section 53(1)(b)).

(c) A bank shall refuse to transfer a share of its capital stock to any person if, when the total number of shares held by him (plus associates) exceeds 10% of the aggregate number of issued shares, such transfer would increase the percentage of such shares held by such person (plus associates). (Section 53(2)(a)).

(d) A bank shall refuse to transfer a share of its capital stock to any person if, when the total number of shares held by him (plus

associates) is 10% or less of the aggregate number of issued shares, such transfer would cause the total number of such shares held by such person (plus associates) to exceed 10% of the aggregate number of issued shares. (Section 53(2)(b)).

(e) The bank may not permit a transfer of a share to a government or agent thereof. (Section 53(3)).

(f) A bank may not accept a subscription for a share if the result would violate the 25% rule. (Section 53(4)(c)).

(g) A bank may not accept a subscription for a share if the result would violate the 10% rule. (Section 53(4)(b) and (c)).

(h) A bank may not accept a subscription for a share from a government or agent thereof. (Section 53(4)(a)).

(i) If on September 22, 1964 any one non-resident held more than 25% of the issued shares of a bank, the bank shall not allow any transfers of its shares to non-residents, except transfers from a non-resident to his associates, this provision to remain in effect until no one person holds more than 10% of the issued shares in the bank. (Section 56(2)(a)).

Sanctions

None of the shares forming part of a block held by any one person (plus associates) which exceeds 10% of the issued shares may be voted. (Section 54(2)). In addition, if between September 22, 1964 and May 1, 1967 a bank permitted a transfer of a share which violated the prohibitions outlined above, then the voting rights pertaining to such share cannot be exercised until such time as such share is transferred to a resident. (Section 56(6)).

Contravention of such voting restrictions or of the ownership restrictions constitutes a summary conviction offense punishable by a fine or imprisonment. (Section 158).

If more than 25% of its issued shares are held by one person (plus associates) at any time after December 31, 1967 then the bank shall not have outstanding total liabilities exceeding twenty times its authorized capital stock. (Section 75(2)(g)).

"Grandfather Clauses"

These ownership restriction provisions of the Bank Act, which became law on May 1, 1967, are modified by "grandfather clauses".

The restriction on voting shares of a block held by any one person (plus associates) does not apply to shares held by a resident on February 17, 1965 nor to shares held by a non-resident on September 22, 1964. (Section 56(3) and (4)).

The restriction on voting shares transferred in contravention of the ownership restrictions between September 22, 1964 and May 1, 1967 does not apply if:

(i) the May 1, 1967 percentage held by all non-residents does not exceed either:

  25%, or

  the percentage actually held by non-residents on September 22, 1964 *if* it was above 25% on that day, and

(ii) the total number of shares held by the non-resident (plus associates) does not exceed 10% of the total issued shares. (Section 56(6)).

In summary, the policy evidenced by the "grandfather clauses" in this statute is that non-resident ownership as at the prescribed date should remain unaffected by the ownership and voting restrictions.

2. *The Canadian and British Insurance Companies Act, R.S.C. 1970, Chapter I-15, as amended.*

This Act provides for the regulation of federal and British insurance companies. The following requirements pertain to federally-incorporated insurance companies.

Ownership

The restrictions on foreign ownership apply only to life insurance companies and are similar to those in the Bank Act. Ownership of issued shares by non-residents is restricted to 25% in the aggregate and to 10% by any one non-resident. Such restrictions may be summarized as follows:

(a) The directors shall refuse to transfer a share of the capital stock to a non-resident if, when the total number of issued shares held by non-residents already exceeds 25% of the total issued shares, such transfer would increase the percentage of such shares held by non-residents. (Section 19(1)(a)).

(b) The directors shall refuse to transfer a share of the capital stock to a non-resident if, when the total number of shares held by non-residents is 25% or less of the total issued shares, such transfer would cause the total number of such shares held by non-residents to exceed 25% of the total number of issued shares. (Section 19(1)(b)).

(c) The directors shall refuse to transfer a share of the capital stock to a non-resident if, when the total number of shares held by him (plus associates) already exceeds 10% of the total number of issued shares, such transfer would increase the percentage of such shares held by such non-resident (plus associates). (Section 19(1)(c)).

(d) The directors shall refuse to transfer a share of the capital stock to a non-resident if, when the total number of shares held by him (plus associates) is 10% or less of the total number of issued shares, such transfer would cause the total number of such shares held by such non-resident (plus associates) to exceed 10% of the issued shares. (Section 19(1)(d)).

(e) Similarly, the directors shall not allot shares in circumstances where, if the allotment were a transfer, the directors would be required under Section 19(1) to refuse to allow the transfer. (Section 19(2)).

Sanctions

Voting rights are suspended in respect of shares held by a non-resident (plus associates) if the number of shares held by them exceeds 10% of the issued shares of the company. (Section 20(2)). Voting rights are also suspended in respect of shares held by non-residents which were transferred to them in violation of the "25%-10%" formula between September 23, 1964 and March 18, 1965. (Section 22(7)). Contravention of these voting restrictions and of

the ownership restrictions are summary conviction offenses punishable by fine or imprisonment. (Sections 20(4), 22(8) and 19(3)).

"Grandfather Clauses"

"Grandfather" provisions are contained in the statute as exceptions both to the transfer restrictions and to the suspension of voting rights.

It should be noted particularly that neither the restrictions on transfers or voting rights are applicable to:

(i) a company of which more than 50% of the issued shares were owned by one non-resident on September 23, 1964; nor

(ii) a company incorporated or registered under the statute after September 23, 1964 if more than 50% of its issued shares are owned by one non-resident either at the time of its first general meeting of shareholders or at the time of its registration, respectively. (Section 22(2)).

Further, suspension of voting rights does not apply to shares forming part of a block exceeding 10% of total issued shares and owned by one non-resident (plus associates), if such block was owned by a non-resident on September 23, 1964. (Section 22(3)).

In summary, the policy evidenced by the "grandfather clauses" in this statute is that non-resident ownership as at the prescribed date should remain unaffected by the ownership and voting restrictions.

3. *The Loan Companies Act, R.S.C. 1970, Chapter L-12, as amended.*

The ownership, sanction and "grandfather" clauses are identical to those in the Canadian and British Insurance Companies Act. (Sections 45 to 48 inclusive).

4. *The Trust Companies Act, R.S.C. 1970, Chapter T-16, as amended.*

The ownership, sanction and "grandfather" clauses are identical to those in the Canadian and British Insurance Companies Act. (Sections 38 to 41 inclusive).

5. *The Investment Companies Act, S.C. 1970-71, Chapter 33.*

This statute, which has not yet been proclaimed in force, contains ownership, sanction and "grandfather" clauses similar to those

in the Bank Act and the Canadian and British Insurance Companies Act.

B. ONTARIO

The Loan and Trust Corporations Act, R.S.O. 1960, Chapter 222, as amended.

Ownership

Ownership restrictions are in all material respects identical to those contained in the Canadian and British Insurance Companies Act. (Section 52b).

Sanctions

Voting rights are suspended in respect of shares held by a non-resident (plus associates) where the number of shares held by such non-resident (plus associates) exceeds 10% of the total issued shares of the company. (Section 52c(4)). Violation of the restrictions constitutes a summary conviction offense. (Sections 52b(4) and 52c(5)).

"Grandfather Clauses"

The voting restrictions do not apply in respect of shares held by non-residents before such provision came into force (June 17, 1970). (Section 52c(4)).

C. ALBERTA

The Trust Companies Act, R.S.A. 1970, Chapter 372.

Ownership

Ownership restrictions are in all material respects identical to those contained in the Canadian and British Insurance Companies Act. (Section 67).

Sanctions

Where any non-resident shareholder (plus associates) holds more than 10% of the issued shares of the company then the voting rights attaching to such shares may not be exercised. (Section 68(2)).

"Grandfather Clauses"

There appears to be no "grandfather clause" relieving from these provisions non-residents who owned such shares at the time the restrictive legislation was passed. It is not known whether any non-resident shareholders were in fact prejudiced by these provisions.

D. Manitoba

The Companies Act, R.S.M. 1970, Chapter C-160, as amended.

The ownership, sanction and "grandfather" clauses relating to loan and trust companies are identical in all material respects to those found in The Loan and Trust Corporations Act, (Ontario). (Sections 253 to 253.5 inclusive).